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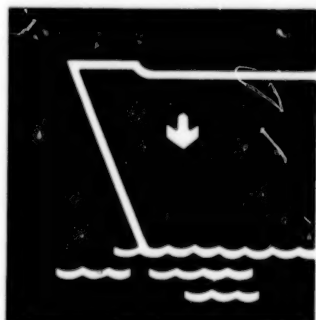
Interstate
Commerce Commission



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1984 Annual Report

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LETTER OF TRANSMITTAL

To the Congress of the United States

Washington, D.C., April 4, 1985

It is my pleasure to submit the ninety-eighth Annual Report of the Interstate Commerce Commission, in accordance with the Interstate Commerce Act.

The report generally embraces the fiscal year ended September 30, 1984, except in the discussion of significant actions that transcend the 12-month period, or where necessary to conform to various statistical analyses.

The statement of appropriations and aggregate expenditures for the 1984 fiscal year appears in Appendix D.

Reese H. Taylor, Jr.
Chairman

THE COMMISSION

(As of September 30, 1984)

	Appointed	Term Expires Dec. 31
Reese H. Taylor, Jr., Chairman (R) Nevada	1981	1983*
Frederic N. Andre, Vice Chairman (R) Indiana	1982	1987
Malcolm M. B. Sterrett (R) Maryland	1982	1987
Heather J. Gradison (R) Ohio	1982	1988
J. J. Simmons, III (D) Oklahoma	1984	1985
Paul H. Lamboley (D) Nevada	1984	1984
Andrew J. Strenio, Jr., (D) Maryland	1984	1985

Commissioner Frederic N. Andre was elected Vice Chairman on January 6, 1984. J. J. Simmons, III, rejoined the Commission on September 10, 1984, after having resigned in February 1983 in order to serve as the Under Secretary of the Department of the Interior. Commissioner Paul H. Lamboley joined the ICC on September 11, 1984, and Commissioner Andrew J. Strenio, Jr., joined on September 14, 1984.

As of September 30, 1984, the Commission was staffed by its authorized complement of seven Commissioners.



The ICC Commissioners as of January 1, 1984. From the left, Commissioner Heather J. Gradison; Vice Chairman Frederic N. Andre; Chairman Reese H. Taylor, Jr.; and Commissioner Malcolm M. B. Sterrett.



The ICC Commissioners as of September 14, 1984. From the left, Commissioner Paul H. Lamboley; Commissioner Heather J. Gradison; Vice Chairman Frederic N. Andre; Chairman Reese H. Taylor, Jr.; Commissioner Malcolm M. B. Sterrett; Commissioner J. J. Simmons, III; and Commissioner Andrew J. Strenio, Jr.

*Chairman Taylor has been renominated for a term expiring on December 31, 1985.



Functions and Responsibility

The Interstate Commerce Commission is an independent Federal agency responsible for regulating interstate surface transportation within the United States. In carrying out its regulatory responsibilities, the Commission attempts to ensure that competitive, efficient, and safe transportation services are provided to meet the needs of shippers, receivers, and consumers.

The ICC today maintains jurisdiction over some 35,141 for-hire companies providing surface transportation in the U.S. These companies include railroads, trucking firms, bus lines, water carriers, one coal slurry pipeline, freight forwarders, and transportation brokers.

The Interstate Commerce Commissioners are appointed by the President and confirmed by the Senate. The ICC was formerly authorized to have 11 Commissioners, each with a seven-year term of office. However, in August 1982 the Congress passed, and the President signed into law, legislation which reduced the ICC's strength from 11 to seven Commissioners as of January 1, 1983, and which will reduce that number even further—from seven to five Commissioners—effective January 1, 1986. Those persons appointed to be Commissioners on or after January 1, 1984, are authorized to serve only five-year terms. As fiscal year 1984 came to a close, the ICC had a complement of seven Commissioners.



How the ICC Operates

The Commissioners supervise all of the ICC's activities, and delegate specific authorities to the Commission's 13 bureaus and offices.

As the executive head of the Commission, the Chairman coordinates and organizes the agency's work and acts as its representative in legislative matters and in relations with other governmental agencies. In addition, the Chairman is generally responsible for:

- 1 Overall Commission management and operations;
- 2 Formulation of plans and policies designed to ensure Commission effectiveness and the able administration of the Interstate Commerce Act;
- 3 Identification and resolution of major regulatory problems; and,
- 4 Development and utilization of effective expert staff support for the fulfillment of the Commission's many duties and functions.

The Vice Chairman represents the Commission or assumes the Chairman's duties during the Chairman's absence or illness. Additionally, the Commission delegates several important functions to the Vice Chairman, including oversight of matters involving the admission, disbarment, or discipline of Interstate Commerce Commission practitioners.



During fiscal year 1984, the Commission's activities were carried out through an organizational structure consisting of the agency's bureaus and offices as follows:

- Small Business Assistance Office — functions as a clearing house for the resolution of small-business problems relative to surface transportation regulation and advises the Commission on the nature and status of such problems
- Office of Public Affairs — furnishes information to the general public and the media concerning ICC decisions and activities; conducts briefings for the media and U.S. and foreign visitors; and prepares the ICC's Annual Report to Congress
- Office of Legislation and Governmental Affairs — analyzes legislative proposals; assists in the development of the Commission's own legislative proposals; aids Congress in the drafting of legislation; assists in the preparation of testimony to be presented before Congressional committees; and assists Members of Congress and other representatives of the 50 states with matters pertaining to the work of the Commission
- Equal Employment Opportunity Office — manages the Commission's efforts to provide equal employment opportunity for all employees and applicants
- Office of the Managing Director — manages the Commission's day-to-day operations
- Office of the Secretary — serves as the Commission's documentation center and is responsible for the issuance of the Commission's decisions and other legal documents
- Office of the General Counsel — renders legal opinions to the Commission,



and defends Commission decisions challenged in court.

- Office of the Special Counsel — contributes to the public-interest record in Commission proceedings and assists individuals, consumer groups, small communities, small shippers, and public utility commission officials participating in the proceedings.
- Office of Hearings — staffed by Administrative Law Judges, this office conducts the Commission's hearings.
- Office of Transportation Analysis — conducts economic and statistical analyses relative to the transportation industry, regulation, and specific Commission proceedings, and provides economic advice to the Commission upon need or request.
- Office of Proceedings — processes formal ICC cases pertaining to operating rights, financial matters, rates, and competitive practices
- Office of Compliance and Consumer Assistance — closely monitors the activities of railroads, trucking companies, barge lines, freight forwarders, and rate bureaus to ensure compliance with ICC policies, and assists the public in the resolution of complaints against ICC-regulated companies
- Bureau of Accounts — concerned with the accounting aspects of economic regulation, this office prescribes uniform accounting rules, reviews various financial reports, and conducts audits of the pertinent records of transportation firms
- Bureau of Traffic — monitors tariff publication, filing, and interpretation, and suspends any unreasonable or unlawful tariffs before they may become effective

YEAR IN REVIEW

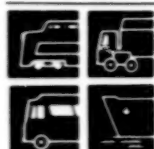
1983

- October 6 ICC proposes to withdraw trucking companies' antitrust immunity on small shipment freight.
- October 17 ICC reopens proceeding to review its household goods operational regulations.
- October 21 ICC assumes direct regulation of intrastate rail rates within the state of Ohio.
- October 23 Industry comments received relative to ICC Uniform Railroad Costing System.
- October 28 ICC approves control of Toledo Terminal Railroad Company by the Chesapeake and Ohio Railway Company.
- November 1 ICC certifies Alaska Railroad for state acquisition.
- November 9 ICC issues special tariff authority permitting Greyhound Lines to publish 50-percent fare reductions on one day's notice during labor strike.
- November 22 The Atchison, Topeka and Santa Fe Railway Company and the Southern Pacific Transportation Company announce merger intentions.
- November 23 ICC adopts final rules concerning forced-sale procedure for bankrupt railroad lines.
- November 29 ICC amends record-preservation rules to reduce costs and burdens to carriers.
- November 30 ICC issues final decision on proposed household goods carriers' performance standards.
- December 1 ICC denies petitions for administrative stay in boxcar exemption proceeding.
ICC adopts CSX Corporation consolidation application for control and interest in American Commercial Lines.
- December 2 ICC denies boxcar exemption stay request.
- December 8 ICC simplifies requirements for rail abandonments and offers of financial assistance.
- December 14 ICC deregulates rail movement of frozen food.
- December 23 ICC issues final 1983 Cost Recovery Percentage of 342.5 percent.
ICC lifts cease-and-desist order allowing Southern Pacific Company and Santa Fe Industries to merge and to place Southern Pacific Transportation Company into a voting trust.
- December 27 ICC submits annual accomplishment report and update of its multi-year Affirmative Action Program Plan to the Equal Employment Opportunity Commission.
ICC issues first quarterly railroad revenue index decision.
- December 30 ICC votes not to delay implementation of direct connector standard.

1984

- January 1 Direct connector limitation on rail ratemaking antitrust immunity becomes effective.
Rail boxcar exemption becomes effective for Class I and Class II rail carriers.
- January 6 Commissioner Frederic N. Andre elected ICC Vice Chairman, new division assignments reported.
- January 16 Frozen food exemption becomes effective.
- January 18 ICC issues amendment to its final rule adopting depreciation accounting for railroad track structure.
- January 19 ICC expands motor carrier zone of rate freedom (ZORF) and simplifies ZORF tariff-filing requirements.
ICC 1984 Affirmative Action Plan for hiring and placement of handicapped individuals approved by the Equal Employment Opportunity Commission.
- January 23 ICC issues special tariff authority permitting an individual motor carrier to file a surcharge on traffic it handles from, to, or through the Commonwealth of Pennsylvania.
- January 31 ICC issues staff study on the nation's intercity bus industry.
- February 2 ICC approves four major route extensions for Greyhound Lines passenger service.
- February 13 ICC issues special tariff authority permitting the filing of Household Goods Carriers' Bureau Three-Digit ZIP Code Mileage Guide.
- February 21 ICC proposes "master" lease for motor carrier leasing operations.
- February 27 Amtrak applies for ICC prescription charges for track operations in greater New York metropolitan area.
- February 28 ICC issues special docket decision allowing several rail carriers to waive collection of \$3,230,500 in unreasonable charges.
- February 29 ICC declines to examine lawfulness of volume discount rates for relocation companies.
- March 1 ICC announces final rule eliminating prohibition against publication of named shippers or receivers in motor carrier tariffs.
ICC issues special tariff authority granting immediate relief to household goods carriers to publish rates for named shippers or receivers.
- March 9 ICC issues special tariff authority permitting water carriers to publish emergency temporary authority tariffs in the same manner as authorized for motor carriers.

March 13	ICC completes "Report on Railroad Contract Rates Authorized by Section 208 of the Staggers Rail Act of 1980."
March 14	Revised ICC regulations permitting lease of private carrier equipment to regulated carriers become effective.
March 15	ICC issues report on findings of 1983 Household Goods Carriers Special Compliance Survey.
March 19	ICC seeks public comment on expansion of rate bureau territory.
March 20	ICC issues second quarterly railroad revenue index decision.
March 21	ICC issues summary of 3,700 new railroad rate contracts.
March 26	ICC announces filing of Southern Pacific-Santa Fe merger application.
March 28	ICC conducts Equal Employment Opportunity training for headquarters' managers and supervisors, and for regional directors.
April 2	ICC headquarters begins series of counseling seminars on the subject of sexual harassment. Prohibition against tariff publication of motor common carrier rates for named shippers or receivers is removed.
April 6	ICC revised policy related to the lease of equipment and drivers to private carriers becomes effective.
April 20	ICC exempts out-of-service rail lines from exit controls. Texas Railroad Commission denied authority to regulate Texas' intrastate rail rates; provisional authority to regulate intrastate rail traffic revoked.
April 22	ICC reiterates single-source leasing exemption following Supreme Court decision.
May 1	ICC issues decision adopting new fees for agency services.
May 15	ICC completes study for the Office of Management and Budget concerning use and future of directed rail service.
May 17	ICC orders cancellation of certain tariff items initiated by rate bureau employees (as opposed to carrier members), and by the National Classification Committee, as being beyond the scope of its antitrust immunity under its collective ratemaking agreement.
May 23	ICC issues rules which reduce the notice period for independent rate filings of motor common carriers and freight forwarders.



May 24	ICC receives General Accounting Office's report covering that agency's audit of ICC's enforcement program.
May 25	ICC sets interim car-hire formula for shipper-owned rail tank cars.
June 1	ICC publishes revised edition of guidelines for public participation in ICC cases under the Bus Regulatory Reform Act of 1982.
June 5	ICC approves new United Van Lines pooling agreement.
June 8	ICC issues Administrative Ruling No. 132 relative to binding estimates of household goods carriers.
June 20	ICC issues third quarterly railroad revenue index decision.
June 25	Rules reducing notice period for independent rate filings by motor carriers and freight forwarders become effective.
June 26	ICC issues special tariff authority permitting motor carriers to file an innovative tariff for the account of a nationwide shipper.
June 27	ICC institutes new rulemaking to consider boxcar car-hire matters.
June 28	ICC exempts rail transportation of poultry, meat, and dairy products and frozen foods.
July 1	Prohibition on collective consideration of single-line motor carrier rates becomes effective.
July 13	ICC serves environmental assessment in proceeding concerning the acquisition of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company.
July 20	ICC issues summary of 2,150 new railroad rate contracts. ICC eliminates "special circumstances" requirement for rail acquisition of motor carriers.
July 25	ICC approves acquisition of American Commercial Lines by the CSX Corporation.
July 30	Poultry, meat, and dairy products exemption becomes effective.
August 7	ICC revokes operating authority of AAACon Auto Transport because of massive consumer fraud and violation of prior ICC orders.
August 9	ICC denies petition for withdrawal of antitrust immunity for motor freight carrier collective ratemaking for small shipments (under 1000 lbs). ICC announces new enforcement policy. ICC requests comments on reopened tariff improvement rulemaking.

- August 16 Norfolk Southern Corporation applies for control of North American Van Lines.
- August 17 ICC issues a released rates decision permitting motor carriers of passengers to transport automobile windshields and window glass without liability.
- August 28 ICC publishes jointly with 20 other Federal agencies a proposed rule which would prohibit discrimination on the basis of handicap relative to programs or activities conducted by the Commission.
- August 29 ICC approves sale of Canadian Southern Railway and Detroit River Tunnel to Canadian carriers.
- September 5 President Reagan extends licensing moratorium on Mexican domiciled, owned, or controlled motor carriers.
- September 7 ICC approves control of American Commercial Barge Lines by CSX Corporation.
- September 10 ICC approves Soo Line Railroad proposal; takes no action on Chicago and North Western Transportation Company request; disapproves other proposals for Chicago, Milwaukee, St. Paul and Pacific Railroad Company reorganization.
Commissioner J. J. Simmons, III, takes oath of office as ICC Commissioner.
- September 11 ICC institutes data-gathering conference concerning implementation of the Staggers Rail Act of 1980.
Commissioner Paul H. Lamboley takes oath of office as ICC Commissioner.
- September 12 ICC certifies to the Reorganization Court the Soo Line Railroad's proposal for reorganization of the Milwaukee.
- September 14 ICC accepts the application of the Norfolk Southern Corporation and North American Van Lines seeking authority for control of North American by Norfolk Southern.
Commissioner Andrew J. Strenio, Jr., takes oath of office as ICC Commissioner.
- September 20 ICC votes in open conference to approve extension of TOFC/COFC exemption to motor carriers not affiliated with railroad companies.
ICC issues fourth quarterly railroad revenue index decision.
ICC rejects certain released rates established under collective procedures by Mid Atlantic Conference.
- September 24 ICC decides to adopt revised tariff publishing rules for all carriers.



- September 26 ICC reopens 1923 *Central Pacific* merger decision to re-examine traffic-protective conditions at the Ogden, Utah, gateway.
- September 27 ICC issues a notice of proposed rulemaking seeking comments relative to a productivity adjustment to the cost recovery index.
- ICC revises costing procedure to develop the Cost Recovery Percentage (CRP), and releases proposed 1984 CRP of 344.5 percent.



LEGISLATION

During fiscal year 1984, the Interstate Commerce Commission's legislative activities were focused once again on Congressional oversight of the implementation and effects of the Motor Carrier Act of 1980, the Household Goods Transportation Act, the Staggers Rail Act, and the Bus Regulatory Reform Act. In addition to testifying at Congressional hearings examining these matters, the Commission supplied written responses to numerous pre-hearing and follow-up questions where more detailed information was requested by those members of Congressional committees overseeing the Commission's activities.

Although the Commission did not submit any formal legislative proposals for Congressional consideration, it closely followed actions taken on legislation which, if enacted, would have had an impact on those interstate transportation activities under its jurisdiction. As part of this process, the Commission commented on legislative measures as they were being developed and occasionally submitted draft language in response to Congressional requests.

The only major bill affecting the Commission's jurisdiction and functions which was substantially completed during the past fiscal year was legislation concerning motor carrier safety.¹ Since one of the bill's provisions would have required the Commission's participation in the establishment of safety fitness standards, the ICC testified on this subject, and was active in negotiations among various parties interested in this legislation. The provisions of the Motor Carrier Safety Act were combined with

other measures related to motor carrier safety, and were passed by Congress before its adjournment shortly after the end of the fiscal year.²

Numerous bills concerning rail matters were introduced in the 98th Congress, but no committee action was taken until September when two hearings were held. Nonetheless, the Commission expects to be active during the current fiscal year in presenting testimony before Congress on various rail bills, and reporting on the impact of the Staggers Act. These activities, combined with continued participation in oversight hearings and possible consideration of freight forwarder deregulation and further motor carrier deregulation, will ensure that the Commission will continue to play an active part in the legislative process.

A more detailed description of the Commission's activities before Congress during fiscal year 1984 is provided in the following sections.

Railroads

Coal Railroad Transportation System — On November 15, 1983, the Commission testified before the Subcommittee on Energy and Mineral Resources concerning its views on regulatory actions related to railroad coal transportation. Since the Subcommittee specifically requested that the Commission address its decision to exempt from regulation the rail transportation of export coal,³ the Commission's testimony began with a discussion of that action.

The Commission stated that its export coal decision was reached only after the compilation and careful consideration of a massive evidentiary record, includ-

¹ Motor Carrier Safety Act of 1984, P.L. 98-554.

³ Railroad Exemption - Export Coal, 367 U.S. 570 (1983).

ing oral argument before the full Commission. In summarizing its decision, the Commission affirmed that: export coal transactions are conducted in a naturally competitive market environment, with foreign competition acting to restrain pricing; producers and carriers have a common interest in the profitable marketing of as much coal as possible; and there is relatively equal bargaining power between producers and carriers, since most export coal movements are arranged by large shippers. The Commission expressed the belief that its coal-export exemption was in keeping with the legislative history of the Staggers Act, and noted that the exemption could be revoked in whole or in part, at any time, if the Commission's expectations proved inaccurate and abuses materialized. The Commission also reported that, while it continued to closely monitor the effects of the exemption in order to detect at an early stage any abuses or market disruptions which might occur, no problems had been observed in the several months since the decision had been effective.

Commission Chairman Reese H. Taylor, Jr., dissented in the export coal case and summarized his views in a statement attached to the Commission's testimony. The Chairman stated that he disagreed with the conclusion that the nature of the world market and the bargaining power of large shippers would provide necessary constraints against market abuse.

The Commission also focused on three other areas of rail regulation of particular concern to the Subcommittee: railroad revenue adequacy standards, market dominance, and rail rates for domestic coal transportation. In discussing these topics, the Commission

emphasized concepts developed since enactment of the Railroad Revitalization and Regulatory Reform Act of 1976 (4-R Act) and the Staggers Act.⁴

The Commission described its efforts to establish a revenue adequacy standard required by the Staggers Act. It noted that both the 4-R Act and the Staggers Act emphasized the need for railroads to improve their financial condition so that they could remain viable in the private sector and compete more effectively. In establishing a revenue adequacy standard, the Commission concluded that railroads should have an opportunity to achieve earnings sufficient to yield a return on investment equal to the current cost of capital, since the railroads can obtain funds only by offering a rate of return comparable to other investment opportunities.

Turning to the concept of market dominance, the Commission explained that the 4-R Act had established market dominance as the threshold test for rate regulation, and that the Staggers Act had quantified the market-dominance standard. The Commission emphasized that accurate market-dominance determinations are central to fulfilling the primary goal of the Staggers Act, that is, permitting the marketplace to be the determining factor in ratemaking except where there is an absence of effective competition.

In implementing the Staggers Act, the Commission adopted a flexible approach with the formulation of general guidelines for the determination of market dominance. With regard to product and geographic competition, the

⁴ PL 94-210 and PL 96-448, respectively.



Commission testified that the existence of such factors provides an effective constraint on the abuse of market power by railroads. The Commission thus concluded that such factors are relevant in determining whether a carrier is market dominant vis-a-vis particular traffic.

Finally, the Commission discussed its rail rate policy for coal. While a substantial amount of coal now moves under contract, there still are a significant number of cases involving the maximum reasonableness of rates for the rail transportation of coal which remain in dispute. For this reason, the Commission proposed a maximum rail rate policy applicable to captive coal traffic. The Commission described four upward constraints involved in the "constrained market pricing" approach which had been proposed,⁵ and reported that comments were under review in that proceeding.

The Commission concluded its testimony on these topics by stating that it was attempting to promote more efficient operations through elimination of the burdensome regulations and practices which tend to stifle innovative rail management. The Commission stated that its policies were designed to encourage and support new ratemaking and marketing practices, and emphasized that its decisions in the areas discussed in its testimony were made to improve competition and provide better rail service to the shipping community.

Competitive Access — On September 18 and 19, 1984, both the Senate and House Judiciary Committees held hearings on proposed legislation which would have amended the Sherman Anti-

trust Act⁶ to prohibit a rail carrier from denying to shippers of certain commodities the use of a track which afforded sole rail access for connection to the track of a competing railroad, or for the ultimate destination of a shipment. Although the Commission did not testify at these hearings, formal written comments were submitted to the committees for inclusion in the hearing records.

The Senate hearing focused on S. 2417, whose intent was to enhance competition in the rail industry for shipments of coal, ore, grain, forest products, chemicals, or fertilizers. In commenting on the provisions of S. 2417, the Commission stated that the bill would attempt to restrain rail rates for shippers by requiring a rail carrier to allow trackage rights over its lines — in order to permit unrestricted carrier access — so that shippers could reach the lines of another carrier. If the originating carrier denied use of the facility on "reasonable" terms to such shipper, and also refused to allow access over its lines to shippers using another carrier, the originating carrier would be presumed to have acted unlawfully with the intent to monopolize trade.

It is the Commission's view that its implementation of the Staggers Act has been successful in removing unnecessary regulation, encouraging efficient carriers to earn adequate revenues, and in balancing the interests of pertinent parties in accordance with the goals of the Act. The Commission has recognized, however, that certain changes in

⁵ Ex Parte No. 347 (Sub-No. 1) *Coal Rate Guidelines — Nationwide*.

⁶ 15 U.S.C. 1 et seq.

railroad policy and operations have been unpopular. One such change was in the area of reciprocal switching, which is one method of providing alternate access. The Staggers Act prompted rail carriers to review existing arrangements and to limit some of them to reflect prevailing competitive conditions and revenue need.

The Commission's statement pointed out a number of practical problems relative to provisions of S. 2417. For example, the Commission maintained that the bill's provisions would have had the effect of requiring trackage rights on any part of a rail carrier's system, rather than being limited, as under current law, to reciprocal switching arrangements in terminal areas. The Commission also expressed the view that access authorization should not be permitted to cause inefficient operations by either carrier involved. Provisions of the bill which contemplated the authorization of shipper operation of rail equipment raised questions regarding labor implications (if traffic were diverted), and liability for accidents or shipper misuse of rail lines. Since there is no limit to the distance for which trackage rights would, in theory, be available, the Commission stated that the bill would have had the effect of creating a nationalized trackage system for involved commodities, and would have artificially controlled track rental prices. The bill also would not have allowed consideration of competitive circumstances in determining whether access should be granted, or in price determinations for rail service.

With regard to terminal-related access, the Commission maintained

that the current law is a preferred vehicle for dealing with access issues, and indicated that provisions of present law had been used by the Commission in authorizing alternate service where practicable and in the public interest, or where necessary to provide competition. Because trackage rights on any part of a rail carrier's system would be far broader and would have a far greater potential impact under S. 2417, the Commission recommended that trackage rights issues be studied further prior to any Congressional action.

In a concurring statement submitted as part of the testimony, Chairman Taylor discussed the Commission's implementation of a new proceeding designed to gather and analyze information from rail carriers and shippers concerning the implementation and effects of the Staggers Act, and to offer a forum for discussion of problem areas by those parties directly affected. The Chairman expressed the hope that the proceeding would provide information which would be helpful in solving some of the problems S. 2417 sought to address.

The Commission submitted similar comments to the House Judiciary Committee for its hearing on H.R. 4559. That bill was similar to S. 2417, except that it was limited to bulk shipments of coal, ore, or grain.

Congress adjourned without taking further action on either of the measures discussed above.

Trucking Companies

Motor Carrier Oversight — The Commission testified three times in oversight hearings on the Motor Carrier Act during fiscal year 1984. The Commission's first appearance on this subject was before the Surface Transportation Sub-



committee of the House Committee on Public Works and Transportation on November 16, 1983. The statement presented by the Commission included appendices providing information on the Commission's motor carrier proceedings, as well as a package of studies and reports issued either in response to Congressional mandates, or as part of the Commission's ongoing efforts to monitor the effects of the Act.

The Commission's testimony strongly reaffirmed the position that the trucking industry and the users of its services have responded favorably to changes mandated by the Motor Carrier Act, and that eased market entry, rate flexibility, and reduced antitrust immunity resulted. Moreover, the Commission reported that the industry's financial picture had become more healthy as carrier earnings improved along with the economy's general recovery.

Also highlighted in its testimony were various indicators which led the Commission to conclude that the Motor Carrier Act reforms were working. At the time of the hearings, more than 19,000 new carriers had received motor operating authority since the Act's effective date. Shipper satisfaction with service levels remained high, and complaint levels for both fiscal year 1982 and fiscal year 1983 were substantially below pre-Motor Carrier Act levels. Improvement in the industry's financial performance paralleled the turnaround in the economy and, while tonnage levels continued to decline somewhat during fiscal year 1983, the decreases were much less than those of the prior year. With respect to rates, the Commission reported that there had been greater pricing innovation and a dramatic increase in independent ratemaking since passage of the Motor Carrier Act. Finally, the Commission submitted a

copy of its Small Community Service Study which reported that motor carrier service to small communities had not been curtailed since implementation of the Act and that, if anything, such service had improved.

The Commission participated in the fourth annual oversight hearings held by the Surface Transportation Subcommittees of the House Committee on Public Works and Transportation and the Senate Committee on Commerce, Science, and Transportation on June 10, 1984, and September 18, 1984, respectively. Testimony submitted by the Commission on these occasions primarily provided an update of the information submitted at the prior-year's hearings. The Commission strongly reaffirmed that the motor carrier industry and its users had responded favorably to changes required by the Motor Carrier Act. The Commission's statement reported a substantial improvement in the motor carriers' financial performance, with large increases in the trucking industry's revenues and earnings for fiscal year 1983 as compared to the previous fiscal year.

The Commission additionally reported several significant developments which have occurred since the Act's passage. The trend toward an increasing number of contract carrier applications filed with the Commission continued. It was particularly evident in the number of requests for authority filed by first-time applicants. Broker authority growth was also strong.

Another trend noted was the declining growth in the number of tariff filings

at the Commission. The Commission stated that this trend occurred as a result of the removal of the tariff-filing requirements for contract carriers, and because of a decreased number of rate discount provisions. As the economy improved, many carriers were placing greater emphasis on service factors, rather than discounting, to obtain new business.

The Commission also reported that it had begun to facilitate intermodalism through its removal of restrictions on grants of authority to railroad-affiliated motor carriers, and by its proposal to modify its policy regarding the acquisition of trucking companies by railroads. Although initial results had indicated that the Motor Carrier Act had little positive impact on owner-operators, the Commission cited data which suggested that owner-operators were making greater use of the special provisions of the Act to obtain their own operating authority.

Since a number of Members of Congress had expressed concern over the issue of motor carrier antitrust immunity, the Commission's statement also described in some detail a proceeding it instituted in response to a petition for the withdrawal of immunity for collective ratemaking for rates on "small" shipments under 1,000 pounds in weight.⁷ The petitioners had alleged that there was little effective competition for shipments below the 1,000-pound level, and that under these conditions collective ratemaking resulted in the imposition of unreasonable rates and allowed bureau members to derive major profits from revenues on small shipments.

The Commission testified that it had closely examined the issues raised by the petitioners and, because of their importance, had held an oral argument on June 26, 1984. The Commission gave full consideration to the arguments presented in the oral argument — together with written comments previously filed — before it voted on the matter at an August 9, 1984, open conference. The Commission reported that it had decided that the record did not support withdrawal of antitrust immunity for collective ratemaking, and that it had voted to deny the petition.

The Commission also described actions taken at a conference held on July 17, 1984, to establish a new enforcement policy under which a "high emphasis" group of violations would receive the greatest allocation of future enforcement resources from the Commission's Office of Compliance and Consumer Assistance (OCCA). The Commission explained that the new policy had been designed to guide OCCA in the effective utilization of Commission resources in furtherance of the ICC's overall policy goals, as well as those of the National Transportation Policy. Involved in this approach is a pro-market enforcement mandate which stresses marketplace solutions and de-emphasizes reliance upon federal intervention whenever possible.

Household Goods Oversight — During fiscal year 1984, the Commission testified at four oversight hearings on the Household Goods Transportation Act of 1980. The first of these appearances was before the Surface Transportation Subcommittee of the Senate Committee on Commerce, Science, and Transportation on November 8, 1983. Identical testimony was pre-

⁷ Ex Parte No. MC-172. *Withdrawal of Antitrust Immunity for Collective Ratemaking on Small Shipments*



sented to the Surface Transportation Subcommittee of the House Committee on Public Works and Transportation on November 16, 1983. The Commission's prepared statements indicated that the Act's impact had been positive, and that substantial progress had been made toward fulfilling the purposes of Congress in its enactment of the legislation.

The Commission's testimony outlined the manner in which it had promptly reviewed and revised all operating regulations for the household goods industry following the Act's enactment. It was reported that many unnecessary regulations were eliminated, and that the Commission's and the carriers' paperwork burden had been substantially reduced. The Commission stressed that the only requirements eliminated were those which reduced paperwork without jeopardizing consumer protection. In addition, the Commission reported that, as part of its continuing effort to reduce regulation, it had reopened an oversight proceeding of its own in order to review household goods regulations in light of experience gained under the existing rules.

The testimony described a monitoring program which was instituted by the Commission in March 1983 to ascertain the level of compliance with its regulations. As part of that program, the Commission noted that it would be examining the programs employed by carriers to monitor their agents. Although a specific audit of such programs had been suggested by the General Accounting Office, the Commission explained that such an audit did not appear to be warranted in light of the substantial decline in the number of complaints received by the ICC. The statement described the Commission's proposal to issue, where

appropriate, reasonable performance standards, and added that comments had been filed in that proceeding.⁸ In conclusion, the Commission outlined its activities in the dispute-resolution program area, and commented that most major carriers and many small carriers had similar programs in place. The Commission stated that such dispute-resolution programs should result in far fewer complaints, and less Commission involvement in this area.

In discussing the impact of the Act on the household goods moving industry, the Commission testified that a wide variety of price and service options had emerged, and that various forms of discounts and diverse service plans were in widespread use. A number of carriers were offering binding-estimate programs, and the offering of guaranteed service dates, with liquidated damages in event of delayed service, was becoming a common practice. In addition, shippers were being given more insurance options than they were offered before the Act became law, including full-value liability protection (involving compensation on the basis of replacement cost) and released-rate provisions which include deductible clauses. It was also reported that the industry's financial condition had improved, with higher earnings for the fiscal year ending June 30, 1983, as compared to the previous year.

Shipper reaction to the new environment created by the Act appeared to be positive, as evidenced by the dramatic decrease in the number of complaints filed since the Act's enactment. The

⁸ Ex Parte MC-19 (Sub-No. 36A) *Practices of Motor Common Carriers of Household Goods (Performance Standards)*, 132 M.C.C. 599 (1981).

Commission stated that this trend reflected shipper satisfaction with the service improvements and diversification made possible by the Act. The Commission also noted that its Office of Transportation Analysis had designed a new study to determine the impact of the Act on carriers and shippers of household goods, and a preliminary outline of that study was supplied as an appendix to the Commission's statement.

The Commission pointed out several apparent trends that were developing within the industry. While some new market entry was acknowledged, the Commission stated that it expected a definite increase in this area as the economy continues to improve. Existing carriers were cited as having substantially expanded their operations in an effort to reduce costs through efficiency improvements, but the most significant trend noted involved the use of contracts. The Commission stated that several of its recent decisions may have positively affected this trend, including the elimination of the tariff-filing requirements for contract carriage. The ICC's testimony also discussed several recent proceedings involving pooling agreements between household goods carriers and their agents.

The Commission participated in the fourth round of household goods oversight hearings in the autumn of 1984. On September 25, 1984, it presented testimony before the Surface Transportation Subcommittee of the Senate Committee on Commerce, Science, and Transportation, and presented identical testimony at a hearing held by the Surface Transportation Subcommittee of the House Committee on Public Works and Transportation on October 2, 1984. The

testimony reiterated the Commission's prior statement, supplied updated information relative to several areas, and provided reports of new developments.

As a result of the monitoring program discussed at the earlier hearing, a report had been issued in March 1984 which indicated a high level of compliance in many, but not all, areas.⁹ The report revealed that the majority of carriers studied are committed to, and have developed, programs which comply with Congressional objectives. Included among these objectives are the acceptance of responsibility for the acts of agents.

The ICC also reported on its proposal to establish reasonable performance standards for the transportation of household goods subject to its regulation.¹⁰ After reviewing comments filed with it by interested parties, the Commission determined that the adoption of standards would be, for the time being, contrary to consumer interests, impractical, and counterproductive, and that any benefits to consumers would be outweighed by the costs of compliance. The proceeding was thus discontinued on December 6, 1983.

In assessing the impact of the Act on the industry, the Commission provided updated information in several important areas. Its testimony reported that some problems had arisen regarding the household goods carriers' practice of providing "binding" or "guaranteed" rates to shippers. The Commission's Office of Compliance and Consumer Assistance had issued an informal rul-

⁹ Special Compliance Survey, *Household Goods Carriers* (March 1984).

¹⁰ Ex Parte MC 19 (Sub No. 36A), *Practice of Motor Common Carriers of Household Goods (Performance Standards)* (not printed), served December 6, 1983.



ing — included as an appendix to the statement — based on what OCCA considered the proper interpretation of the Act in the absence of Commission decisions. The Commission added that it was continuing to study the situation. Available information on the industry's financial condition indicated that household goods carriers fared much better during the recession than other motor carriers of property, that the industry rebounded rapidly in fiscal year 1983, and that further improvements were experienced in fiscal year 1984. The statement reported that consumer complaints remained substantially below pre-Act levels.

The Commission also reported on a study being conducted by its Office of Transportation Analysis to determine the impact of both the Household Goods and Motor Carrier Acts on household goods carriers. Some preliminary conclusions were discussed which were based on a review of the data collected up to that time. The study's preliminary conclusions were as follows: about 10 percent of all current household goods carriers obtained their authority since the Motor Carrier Act; there has been a substantial increase in the acquisition of authority to transport other commodities by all classes of household goods carriers, and there has been a considerable increase in the use of contracts, discounts, and binding estimates.

In closing, the Commission stated that the Act appeared to be working well, to the benefit of both carriers and shippers. The Commission pledged to continue its implementation efforts, and stated that it was dedicated to the elimination of unnecessary regulation and the fostering of flexible, responsible, and innovative pricing.

The Commission provided comments on Section 13 of S. 2174 which would require the Department of Transportation (DOT) and the Commission to establish specific safety fitness standards for applications, as well as procedures for determining compliance with those standards. Although the Commission believed that its application procedures — when combined with the insurance requirement — were adequate to ensure the safety of motor carrier operations, it viewed Section 13 of S. 2174 as a useful approach which could aid efforts in this area. However, the Commission emphasized that fitness requirements should not be established that would be so restrictive and burdensome as to erect unnecessary economic entry barriers to qualified applicants. The testimony pointed out some problems involved in the use of the licensing process as a safety regulation tool, including the fact that first-time applicants often have no record from which a safety assessment may be made.

The Commission closed its testimony by stating that increased emphasis on safety is crucial as economic regulation is reduced, and that the ICC remains committed to safe — as well as economical — transportation.

The Commerce Committee favorably reported S. 2174 on May 2, 1984. The provisions of that bill were incorporated into S. 2217 which was passed by the Senate and the House in the closing days of the 98th Congress and signed by the President on October 30, 1984.¹¹

Safety — The safety of motor carrier operations was examined by Congress

¹¹ PL 98-554.

during fiscal year 1984, and the Commission contributed to the debate on this issue by testifying before the Surface Transportation Subcommittee of the Senate Committee on Commerce, Science, and Transportation on February 9, 1984. The testimony addressed motor carrier safety issues generally, the procedures utilized by the Commission to determine the safety fitness of applicants for authority, and provisions of S. 2174, the Motor Carrier Safety Act of 1983.

The Commission remarked that although it no longer had jurisdiction in the safety area, safety nevertheless remains a continuing concern. The testimony highlighted the requirements that trucking companies maintain adequate insurance in order to protect the public, and the Commission's requirement that companies file evidence of insurance in compliance with minimum levels prescribed by the DOT before a certificate of authority is granted. The Commission noted, however, that insurance may be purchased at a price regardless of a company's safety record.

The Commission stated that it views the safety fitness issue as a serious one, and cited its advocacy of a provision adopted in the Bus Regulatory Reform Act which strengthened the Commission's ability to prevent unsafe passenger operations. The testimony described the procedures used in cooperation with the DOT's Bureau of Motor Carrier Safety to determine the safety ratings of applicants, and the

manner in which such safety information is applied in application cases.

Buses

The Commission also testified four times in fiscal year 1984 during the course of two separate rounds of oversight hearings to examine the Commission's implementation of the Bus Regulatory Reform Act of 1982 (Bus Act) and its impact on the industry and consumers. In the first set of oversight hearings, the Commission testified before the Surface Transportation Subcommittee of the Senate Commerce Committee on November 1, 1983, and before the Surface Transportation Subcommittee of the House Public Works Committee on November 16, 1983.

The Commission's testimony stressed its strong support for the Bus Act, and described its efforts to move expeditiously in proposing implementing rules. The Commission stated its belief that the Act established eased market entry and a more definite procedure for exit from unprofitable service, and provided bus companies greater flexibility in pricing their services. Although the Commission believes it may be another year or two before the full effects of the reforms are realized, it maintained that many firms had already come forward to take advantage of the new operational freedoms offered them by the Act.

The Commission reported that the Act had had a significant effect in the area of entry. Major carriers had moved to rationalize their route structures, and many smaller carriers had entered into, or expanded existing, regular-route operations. In particular, there had been a dramatic increase in charter services which require very low start-up or capital costs. One issue that had arisen in the entry area concerned applications by



government-subsidized carriers to operate charter and special services. The Commission reported that replies had been filed to a petition requesting consolidation of several of these applications, and that the matter was pending at the time it testified.

As part of its testimony, the Commission described in detail the industry's response to the rate freedoms contained in the Act. Although fare increases had occurred on certain routes, the Commission reported that carriers had responded to the newly competitive environment by filing a number of independent rate actions and initiating some innovative discount programs. The Commission reiterated that it saw no need for continued anti-trust immunity for the collective determination of general rate changes, innovative fare changes, or broad changes in the tariff structure of motor common carriers of passengers. The Commission also described its actions on petitions it had received for review of the intrastate rates of interstate bus companies, in accordance with Section 17 of the Bus Act.

One of the major concerns regarding the Bus Act was its effect on service to small communities. The Commission reported that the major carriers had proposed to drop or had dropped numerous points from their route system. This was not an unintended nor unexpected result, since one of the aims of the Act was to give carriers the freedom to reorganize their route structures. Accordingly, the Commission discussed its consideration of the petitions it had received requesting pre-emption of state decisions denying interstate carriers permission to terminate certain intrastate, regular-route passenger services.

The Commission reported that com-

plaints to the ICC about bus service had declined during fiscal year 1984. Although the bus industry did not fare well during the recession, the Commission expressed confidence that as carriers took advantage of new freedoms contained in the Bus Act, and as the economy continued to improve, their financial results would improve also. The Commission additionally described several projects it had conducted in order to assist the industry, state and local governments, and the public to adjust to the changes brought about by the Act. The testimony also mentioned a planned study that would focus on the market structure, conduct, and performance of the bus industry,¹² and a study undertaken with the DOT on intercity bus terminals and stations.¹³

A second set of bus oversight hearings was held before the Surface Transportation Subcommittees of the Senate Commerce Committee on September 25, 1984, and the House Public Works Committee on October 2, 1984. The statement provided by the Commission updated information from prior testimony and highlighted new developments.

The Commission reported that its Office of Transportation Analysis had completed the study of the industry's market structure, conduct, and performance as discussed in the previous year's testimony, and copies of the study were submitted as a supplement to the Commission's testimony. The Commission also stated that the terminal study undertaken with the DOT was near completion, and it reported some tentative

¹² *The Intercity Bus Industry*, January 1984.

¹³ *The Intercity Bus Terminal Study*, December 1984. A Report to the President and the Congress of the United States.

findings and conclusions based on preliminary data analyses. The information gathered by that time indicated that 25 percent of all intercity bus carriers use terminals or stations. The testimony stated that while some small carriers have had difficulties, in a few instances, in obtaining access to the facilities of the two major carriers, the pattern of bus facility ownership and control did not appear to present insurmountable barriers to market entry for the industry as a whole.

The Commission also discussed a survey of state regulatory bodies conducted in January and February 1984 by its Small Business Assistance Office to provide information concerning changes that had occurred in bus service since implementation of the Bus Act.

In reporting on the industry's financial condition, the Commission stated that the latest available information showed that the ten largest bus companies continued to suffer decreased earnings and ridership. The Commission indicated that although the recent improvement in

the Nation's economy and passage of the Bus Act had not arrested the decline in bus industry ridership and earnings, the effects of the recent recession would have been more severe without the reforms included in the Bus Act. The testimony suggested that increased automobile usage, stable gasoline prices, and some substantially discounted airline fares had also contributed to the decline in bus ridership. Lastly, a strike by Greyhound bus drivers which occurred during fiscal year 1984 was also cited as having adversely affected the industry.

The Commission closed its testimony by repeating its belief that the bus industry was responding positively to the operational freedoms afforded by the Act, and that the end result would be improved price and service options for bus passengers.

ADMINISTRATION

Commission Budget

The Commission's fiscal year 1986 budget was developed and submitted concurrently to the Office of Management and Budget and the Congress in September 1984. The budget reflects the need for fewer staff members as a result of the ICC's reduced regulatory role in motor carrier and rail matters.

Salary and Expenses Appropriation

On February 22, 1984, Chairman Reese H. Taylor, Jr., Commissioner Heather J. Gradison, and Commission staff appeared before the Subcommittee on Transportation of the House Committee on Appropriations to testify on the ICC's fiscal year 1985 budget request. Testimony was provided to the Subcommittee on Transportation of the Senate Committee on Appropriations on April 4, 1984.

Equal Employment Opportunity

The Commission prepared a Notice of Proposed Rulemaking to implement Section 504 of the Rehabilitation Act of

1973, as amended, which prohibits discrimination on the basis of handicap relative to programs or activities conducted by the Commission. The proposed rule was published jointly with 20 other agencies in the *Federal Register* on August 28, 1984. It is anticipated that final rules will be issued by the middle of fiscal year 1985.

Despite personnel reductions during the past fiscal year, the Commission continued to emphasize positive policy objectives in the EEO area, and remains committed to upward-mobility programs which enhance the potential of female and minority employees through intensive training efforts. The active involvement and support of managers has contributed much to the success of the Commission's program to date, and they will continue their efforts in the future.

Payments for Directed Rail Service Appropriation

Between October 5, 1979, and March 23, 1980, the Kansas City Terminal Railway Company provided rail services, as directed by the Commission, over the lines of the bankrupt Chicago, Rock Island and Pacific Railroad. Funding for claims associated with this service and for accounting operations was provided through fiscal year 1984.

ENERGY AND ENVIRONMENT

Virtually all of the work done by the Commission's Section of Energy and Environment consists of environmental documentation prepared in response to the National Environmental Policy Act's (NEPA) directive that federal agencies assess the environmental consequences of any action which they propose. The bulk of this documentation is comprised of environmental assessments and environmental impact statements (EIS) which analyze the effects of railroad construction, consolidation, and abandonment proposals for which ICC authorization is required.

Notwithstanding the weak coal market and the accompanying lull in rail construction activity, the Commission's environmental unit devoted time during fiscal year 1984 to environmental analyses of seven separate rail construction proposals. Included among these were: (1) longstanding proposals for an 82-mile coal transportation line in southeastern Montana¹ and a 65-mile coal line in central Utah,² both of which are being treated in EIS's; (2) new plans for a 20-mile line in Florida which would serve a phosphate mine,³ and a six-mile line in Colorado which would serve a hazardous waste facility;⁴ (3) proposals presently before other federal agencies for a new coal line in Nevada;⁵ (4) a high speed passenger rail line between Los

Angeles and San Diego, California;⁶ and, (5) the alignment of a reconstructed and newly constructed rail line to avoid wetlands damage in Michigan.⁷

The Commission also completed environmental assessments for two major rail consolidation proceedings involving the CSX Corporation's bid to buy a large water carrier, American Commercial Lines, Inc.⁸, and the sale of the Milwaukee Road core to one of several interested railroads.⁹ Similar studies are being prepared in connection with the proposed merger of the Santa Fe and Southern Pacific railroads¹⁰, and the proposed acquisition by Norfolk Southern Railroad of a major motor common and contract carrier, North American Van Lines, Inc.¹¹

During the last fiscal year the environmental unit also continued work on a final EIS analyzing the impacts of the proposed rate guidelines for rail movements of coal throughout the United States.¹² At the same time, the Commission began work on an EIS addressing the novel impacts of a controversial proposal to abandon a 165-mile rail line in

¹ American High Speed Rail Corporation — Railroad Construction — Los Angeles to San Diego, California.

² Finance Docket No. 30433. Tuscola and Saginaw Bay Railway Company, Inc. — Exemption From 49 U.S.C. 10901 (not printed), decided April 5, 1984.

³ Finance Docket No. 30300. CSX Corporation — Control — American Commercial Lines, Inc. — served September 7, 1984.

⁴ Finance Docket No. 28640 (Sub No. 9) et al. Chicago Milwaukee, St. Paul and Pacific Railroad Company — Reorganization — Acquisition by Grand Trunk Corporation (served 26, 1984).

⁵ Finance Docket No. 30400. Santa Fe Southern Pacific Corporation — Control — Southern Pacific Transportation Company — Merger — The Atchison, Topeka and Santa Fe Railway Company and Southern Pacific Transportation Company.

⁶ Finance Docket No. 30500. Norfolk Southern Corporation — Control — North American Van Lines, Inc.

⁷ Ex Parte No. 347 (Sub No. 1). Coal Rate Guidelines — Nationwide.

¹ Finance Docket No. 30186. Tongue River Railroad — Construction and Operation — of a Line of Railroad in Custer, Rosebud, and Powder River Counties, Montana.

² Finance Docket No. 30044. The Denver and Rio Grande Western Railroad Company — Construct and Operation — in Carbon and Emery Counties, Utah (Proceeding voluntarily dismissed).

³ Finance Docket No. 30482. Becker Railroad Corporation — Exemption From 49 U.S.C. 10901, 11301 and 10746.

⁴ ICAST and Western Railroad Company — Construction — in Pueblo County, Colorado.

⁵ White Pine Project — Railroad Construction — in Eastern Nevada.

northern California.¹³ This same proceeding was also one of several recent cases which brought into focus an apparent conflict between the Coastal Zone Management Act,¹⁴ which gives individual states the time to assess and the right to control activities in their coastal areas, and the Staggers Rail Act of 1980, which directs the ICC to reach decisions on rail abandonment applications (even in coastal areas) within tightly controlled time frames.

Other accomplishments during fiscal year 1984 included: (1) refinement of a detailed outline providing guidance to rail construction applicants for the preparation of environmental reports; (2) initiation of consultations with the Advisory Council on Historic Preservation about ways to accommodate the competing provisions of the Interstate Commerce Act and the National Historic Preservation Act; and, (3) the filing of a record number of requests with the Keeper of the National Register of Historic Places for a determination as to the eligibility of bridges, depots, and other rail structures affected by rail abandonment for inclusion in the National Register. The Commission also prepared 113 environmental reviews of 164 rail-exemption petitions and 93 finance-docket applications seeking approval of trackage rights agreements, rail acquisition,

and other minor rail consolidation proposals.

The past fiscal year has also seen the Commission adopt several new rules designed to either facilitate or streamline Commission efforts to comply with existing environmental legislation. As part of its overhaul of rail abandonment regulations, the Commission adopted a requirement that abandonment applicants file materials with the Commission which identify and describe any potentially historic structures which would be affected by abandonment.¹⁵ In a second proceeding, the Commission imposed a requirement that any person seeking imposition of a public-use condition on a grant of rail abandonment authority must specify, in writing, the condition requested and the period of time for which it would run, and must provide justification for those requests.¹⁶ In a third proceeding, the Commission approved a procedure which would require rail exemption petitioners and rail abandonment applicants to provide advance notice of their intentions to state and local agencies which expressed an interest in commenting on the environmental impact of such proposals.¹⁷

¹³ Docket No. AB 14 (Sub No. 4) *Northwestern Pacific Railroad Co. - Abandonment*, in Mendocino, Trinity, and Humboldt Counties, CA.

¹⁴ PL 92-583.

¹⁵ *Revision of Abandonment Regulations*, 367 I.C.C. 831 (1983).

¹⁶ *Rail Abandonment - Public Use Condition*, 1 I.C.C. 2nd 1 (1984).

¹⁷ *Environmental Notices in Abandonment and Rail Exemption Proceedings*, 1 I.C.C. 2nd 11 (1983).



RAILROADS

General Financial Condition

Because of the economy's general recovery during the past fiscal year, revenue carloadings of Class I line-haul railroads rose 11.8 percent during the nine months ending June 30, 1984, compared to the similar period ending in June 1983. Improved economic conditions, an increase in demand for electricity generation, and the stockpiling of coal by utilities in advance of a possible strike by coal miners (which did not materialize), caused carloadings of coal — the largest revenue-producing commodity for the rail industry — to rise by 8.6 percent for the nine months ending in June 1984.

Coupled with moderate inflation, a decline in interest rates, and declining unemployment, the recent economic expansion has also led to a substantial increase in sales of new automobiles. Accordingly, motor vehicle carloadings for Class I line-haul railroads increased 34 percent for the nine-month period ending June 30, 1984, compared to the same period in 1983.

Commission data for Class I line-haul railroads for the 12 months ending June 30, 1984, and June 30, 1983, show that revenues increased 10.3 percent, to \$28.5 billion, and that revenue ton-miles of freight increased 13.7 percent. Beginning with calendar year 1983, the Commission revised its regulations governing track-structure accounting from the retirement-replacement-betterment accounting method to the ratable depreciation accounting method. Because comparable prior-year data are not fully available, earnings-data comparisons for the 12 months ending June 30, 1984, and June 30, 1983, are not possible. However, on the basis of the ratable depreciation accounting method, net railway operating income

for the 12 months ending June 30, 1984, totaled nearly \$2.4 billion, net income before extraordinary items reached \$2.6 billion, and the rate of return on net investment in transportation investment for Class I line-haul railroads was 5.5 percent.

Despite traffic-volume increases, the railroad industry continues to operate with a reduced personnel level. Total Class I line-haul railroad employment for the first nine months of 1984 declined 1.4 percent to a monthly average of 325,500 employees, compared to a monthly average of 330,250 employees during the same period of 1983. Maintenance-of-equipment employees and maintenance-of-way-and-structure employees increased by about 2.7 percent and 1.0 percent, respectively.

The fiscal year 1984 decline in overall employment levels and the increase in traffic suggest that the rail industry has made productivity gains following the economic recession of 1981-1982. The long-term outlook for the industry remains favorable, especially in view of the current economic recovery and increased freedom granted to the industry under the Staggers Rail Act of 1980. Under provisions of the Staggers Act, railroads have been able to strengthen their financial condition by increasing revenues through rate increases and by discontinuing unprofitable services.

Reorganizations

During fiscal year 1984, a plan proposed by the Soo Line Railroad Company (Soo) to reorganize and acquire the Chicago, Milwaukee, St. Paul and

Pacific Railroad Company (Milwaukee) was approved in a Commission proceeding and certified to Milwaukee's Reorganization Court.¹ In reaching its decision, the Commission found that Soo's proposal was consistent with the public interest and the Bankruptcy Act, the Milwaukee Railroad Restructuring Act, and the Interstate Commerce Act. In the same proceeding, the Commission initially disapproved proposals advanced by the Grand Trunk Corporation and the Chicago Milwaukee Corporation to reorganize and acquire Milwaukee, and returned without action to the Reorganization Court the acquisition proposal of Chicago and North Western Transportation Company (CNW). The Commission subsequently found CNW's proposal also consistent with the public interest and with the relevant statutes. The Commission has also approved petitions by Milwaukee's Trustee and counsel to set maximum limits of compensation under the Bankruptcy Act.

Under Section 77 of the Bankruptcy Act, the Commission retains jurisdiction over three other railroad reorganizations, involving the Boston and Maine Corporation, the Morristown and Erie Railroad Company, and the New York, Susquehanna and Western Railroad Company. While these reorganizations are essentially complete, several petitions were filed during the fiscal year by Trustees and counsel to set maximum limits of compensation under the Bankruptcy Act.

In November 1983, the Commission issued final rules governing the forced

sale of lines of bankrupt railroads² under Section 213 of the Rail Safety and Service Improvement Act of 1982. By these rules, the Commission will prescribe terms and compensation for the sale of lines where no service is being provided by the owner. Commission prescriptions will be made at the request of a financially responsible offeror whose purchase offer has either been rejected by the trustee or not acted on within 120 days.

In a precedent-setting decision, the Commission denied the application of the Colorado and Eastern Railroad Company to acquire two end portions of a line owned, but not operated, by the trustee of the bankrupt Chicago, Rock Island and Pacific Railroad.³ The applicant had sought sale of only the two end segments of the line and did not intend to continue rail service over the entire line. Forced sales procedures were found to be inappropriate for this type of transaction.

Mergers and Consolidations

In a major consolidation decision,⁴ the Commission approved the control of American Commercial Lines, Inc. (ACL), and its water carrier subsidiary, American Commercial Barge Lines Company (ACBL), by the CSX Corporation (CSX), a large railroad holding company. This proceeding arose through

¹ Finance Docket No. 28640 (Sub-No. 9) et al. Chicago Milwaukee, St. Paul and Pacific Railroad Company — Reorganization and Acquisition by Grand Trunk Corporation — I C C — (served September 26, 1984).

² Ex Parte No. 282 (Sub-No. 4a). *Forced Sale Procedures for Bankrupt Railroad Lines*. 367 I C C 789 (1983).

³ Finance Docket No. 30374. *Colorado and Eastern Railroad Company — Forced Sale Purchase (Portion) — Chicago, Rock Island and Pacific Railroad Company Debtor (William M. Gibbons, Trustee)* (not printed) served March 30, 1984.

⁴ CSX Corporation — Control — American Commercial Lines, Inc. — I C C 2 d — (1984).



CSX's acquisition of the stock of Texas Gas Resources Corporation, the corporate parent of ACBL. Pending a formal application for approval of control, the Commission allowed CSX to acquire Texas Gas subject to placing ACBL stock in an independent voting trust.

Railroad interests in water carriers are subject to prior Commission approval under Section 11 of the Panama Canal Act.⁵ In approving CSX's acquisition, the Commission relied on the relative ease of entry into the barge industry and intra- and intermodal competition. Although CSX and ACBL were acknowledged to be competitors in the service of common points and in the solicitation of the same traffic, no measurable reduction in competition was found to result from the acquisition. The Commission also determined that ACBL will continue to be operated competitively in interstate commerce, and oversight and reporting conditions were imposed in this proceeding to allow periodic Commission review of the effects of the acquisition on competition. A subsequent petition by the Water Transport Association and others to stay the ICC's decision, pending judicial review, was denied, and several petitioners have filed a court action to review the decision.

In September 1984, the Commission approved an application filed by the Canadian National Railway Company (CN) and Canadian Pacific Limited (CP) to acquire all of the interest of the Consolidated Rail Corporation (Conrail) in the Canada Southern Railway Company (CSR).⁶ If the Canadian government

approves the transaction, CN will assume operation of the Detroit River Tunnel and significantly upgrade CSR's tracks and United States rail connections, and CP will be able to serve Niagara Falls and interchange with U.S. carriers directly.

In reaching its decision, the Commission found no competitive impact in the Ontario rail corridor between Detroit and Niagara Falls-Buffalo, because most traffic moves over U.S. routes and multiple carriers provide competitive service, and it concluded that acquisition of the Conrail properties would not enable CN or CP to exercise monopoly power. The proposed imposition of various interchange and trackage rights conditions sought by opponents to the acquisition were rejected either as being provided under existing agreements or unrelated to the transaction. Labor protective conditions were imposed for Conrail's U.S. employees affected by the acquisition. The transaction has been approved by the Canadian Transport Commission, but is pending on appeal.

In separate decisions,⁷ the Commission approved the applications of the Chesapeake and Ohio Railway Company (C&O) to acquire control of two Class III railroads, the Toledo Terminal Railroad Company (TTR) and the Port Huron and Detroit Railroad Company (PH&D). In these cases, the Commission found little likelihood of anticompetitive consequences as a result of the acquisitions.

⁵ 49 U.S.C. 11321 and 49 U.S.C. 11344(d).

⁶ Finance Docket No. 30387. Canadian National Railway Company and Canadian Pacific Limited — Acquisition — Interests of Consolidated Rail Corporation in Canada Southern Railway Company and Detroit River Tunnel Company (not printed), served September 4, 1984.

⁷ Finance Docket No. 30201. Chesapeake and Ohio Railroad Company — Control — Toledo Terminal Railroad Company (not printed), served October 28, 1983, and Finance Docket No. 30440. Chesapeake and Ohio Railway Company and CSX Corporation — Control — Port Huron and Detroit Railroad Company (not printed), served September 19, 1984.

The Commission found that C&O would not be able to use its control of TTR to deny rail competitors access to Toledo, Ohio, as a market or as an east-west gateway. Concerning the operations of the PH&D, the consolidation resulted in an end-to-end expansion of single-line service, which is considered to be a vertical integration of marketing operations, and which is anticipated to have certain beneficial, competitive results. In approving the consolidation, the Commission also found that shippers will continue to have a variety of transportation options available to them.

On limited court remand,⁸ the Commission reopened an October 1982 proceeding involving its decision to approve the consolidation of the Union Pacific Railroad Company, the Missouri Pacific Railroad Company, and the Western Pacific Railroad Company. This case was reopened in order to reconsider the Commission's earlier denial of the Denver and Rio Grande Western Railroad Company's request for independent ratemaking authority over Western Pacific routes between Utah and northern California.

A new western rail merger was proposed on November 22, 1983, when the Santa Fe Southern Pacific Corporation (SFSP) and the Atchison, Topeka, and Santa Fe Railway Company (ATSF) gave

notice of intent to acquire the Southern Pacific Transportation Company (SPT), and to merge the ATSF with the SPT. At the outset of this proceeding, the Commission issued a cease-and-desist order which prevents the parent corporations of SPT and ATSF, the Southern Pacific Corporation (SPC), and Santa Fe Industries from merging into SFSP. This step was taken so that the Commission could consider the legal sufficiency of the proposal to place SPT into an independent voting trust during the pendency of the merger proceeding, the ability of SPT to continue service after its proposed separation from SPC, and the financial support of SPC. On December 23, 1983, the Commission lifted its cease-and-desist order, the merger of SPC and SFI was consummated soon thereafter, and SPT was placed in a trust managed by The Valley National Bank of Arizona.

In April 1984, the Commission accepted for consideration the formal application for the merger of SPT and ATSF. Responsive applications made by several western railroad companies for trackage rights and other conditions were accepted in several Commission decisions served in August 1984. Hearings in this case began in October 1984,⁹ and an extensive number of pertinent public comments continue to be filed with the Commission.

In response to a petition¹⁰ filed by SPT, the Commission reopened a 1923 consolidation proceeding¹¹ to consider

⁸ Finance Docket No. 30400. *Santa Fe Southern Pacific Corporation — Control — Southern Pacific Transportation Company*.

⁹ Finance Docket No. 2613 (Sub No. 1). *Control of Central Pacific by Southern Pacific* (not printed), served September 26, 1984.

¹¹ *Control of Central Pacific by Southern Pacific*, 76 I.C.C. 508 (1923) as modified at 328 I.C.C. 345 (1966).

⁸ *Southern Pacific Transportation Company et al. v. ICC*, 736 F.2d 708 (D.C. Cir. 1984).



the removal of certain traffic-protective conditions imposed at SPT's Ogden, Utah, gateway. At the request of SPT, this proceeding is not being considered with the Santa Fe Southern Pacific application.

Rates

Current common carrier rate levels are derived from an updated "rate base" established by Congress as those rates which were in effect on October 1, 1980, subject to protest. While rail shippers filed 864 complaints over the reasonableness of the base rates, during fiscal year 1984, most pertinent litigation has been substantially resolved. Substantial traffic continues to move under this system, despite the existence of numerous industry-wide exemptions and 18,171 rail transportation contracts.¹²

The base rates are updated by the Commission each quarter-year to account for changes in railroad costs.¹³ During the last fiscal year, the labor index was restated at national contract levels for Conrail, and at actual labor costs for all other railroads under the Northeast Rail Service Act of 1982.¹⁴ The Commission continues to examine the feasibility of the addition of a specific productivity adjustment factor and the propriety of adjusting the index for a profit element.¹⁵

Fiscal year 1984 saw the Commission's rules concerning the filing of railroad contracts and contract disclosure affirmed in court, but the Court ruled that easier discovery methods were required in administrative complaint proceedings.¹⁶ Interim regulations accordingly were adopted by the Commission, and comments were sought on the discovery issue.¹⁷ Two national associations (aluminum and wheat) petitioned the ICC for the issuance of an order declaring that receivers who do not directly pay freight charges are not the "purchasers of rail services" eligible to contract under Section 10713 of the Interstate Commerce Act. The Commission found that such a narrow interpretation was not intended by the Act.¹⁸

Based on complaints alleging unreasonable discrimination or destructive competitive practices, the Commission instituted proceedings during the last fiscal year to review three forest products contracts. Complaints were dismissed in each case, and the contracts in question were approved.¹⁹

The Commission continued its development of maximum rate guidelines for market dominant coal traffic during fiscal year 1984, as extensive and

¹² As of October 2, 1984.

¹³ The updating was done through a series of decisions issued in Ex Parte No. 290 (Sub-No. 2) *Railroad Cost Recovery Procedures* (not printed) filed on December 27, 1983, March 21, 1984, July 1, 1984, and October 1, 1984.

¹⁴ Ex Parte No. 290 (Sub-No. 2), *Railroad Cost Recovery Procedures* (not printed), served December 19, 1983, and March 21, 1984.

¹⁵ Ex Parte No. 290 (Sub-No. 4) *Railroad Cost Recovery Procedures — Productivity Adjustment* (not printed), served September 27, 1984.

¹⁶ *Water Transport Ass'n v. I.C.C.*, 722 F.2d 1025 (2d Cir. 1983).

¹⁷ *Railroad Transportation Contracts*, _____, I.C.C. 2d _____, (1984).

¹⁸ No. 39589, *The Aluminum Association, Inc. — Petition for Declaratory Order* (not printed), served May 11, 1984.

¹⁹ No. 39678, *Southern Pacific Contract ICC-SP-C-1349* (not printed), served April 19, 1984; No. 39683, *Southern Pacific Contract ICC-SP-C-1371* (not printed), served May 23, 1984; and No. 39709, *Southern Pacific Contract ICC-SP-C-1418* (not printed), served April 18, 1984.

diverse comments were received in response to its earlier-announced "Constrained Market Pricing" approach to rate setting. In addition, oral argument sessions were scheduled to provide an opportunity for parties to file supplementary remarks concerning "Constrained Market Pricing."²⁰

In other rate actions, a petition for the establishment of rate standards for non-coal traffic was denied as premature until the Commission had completed its coal rate standards proceeding,²¹ and a coal maximum-rate complaint was decided under a mandamus action before the Commission's final guidelines were adopted.²² The complaint was denied in the latter proceeding when the complainant did not meet its burden of proof under the proposed guidelines, and the Commission's decision was subsequently upheld in court.²³ A number of "maximum reasonableness" cases, as well as some non-coal proceedings,²⁴ are currently being held in abeyance pending adoption of the final guidelines for coal traffic.

The Commission's market dominance standards and guidelines, which a court panel had reversed relative to product and geographic competition, were affirmed last fiscal year on rehear-

ing *en banc*,²⁵ and another court held that those standards do not apply retroactively to proceedings undertaken before enactment of the Railroad Revitalization and Regulatory Reform Act of 1976.²⁶

In other Commission actions in the area of rates, the ICC proposed²⁷ and made²⁸ further refinements in its method of estimating the cost recovery percentage used in making jurisdictional threshold findings for rate regulation of market dominant traffic, and had its policy of considering Long-Cannon amendment issues²⁹ on a case-by-case basis affirmed in court.³⁰ The Commission also has been reviewing rail rate actions on recyclables and railroad company compliance with the recyclable rate cap, and is examining the rate cap itself in light of current data.³¹ Three complaints involving non-ferrous recyclables are currently pending on appeals from the initial Commission decisions made in fiscal year 1984.³²

²⁰ Ex Parte No. 347 (Sub-No. 1), *Coal Rate Guidelines* — Nationwide (not printed), served August 21, 1984.

²¹ Ex Parte No. 454, *Petition for Determination of Maximum Reasonableness Guidelines for Non-Coal Commodities* (not printed), served May 3, 1984.

²² No. 36114 (Sub-No. 1), *Potomac Electric Power Company v Consolidated Rail Corporation*, 367 I.C.C. 532 (1983).

²³ *Potomac Electric Power Company v I.C.C.*, F2d (D.C. Cir. 1984).

²⁴ For example, see No. 37010, *General Electric Company v Delaware and Hudson Railway Company, et al.* (not printed), served December 29, 1983, and No. 37478, *Amstar Corporation v The Atchison, Topeka and Santa Fe Railway Company, et al.* (not printed), served January 23, 1984.

²⁵ *Western Coal Traffic League v United States*, 719 F.2d 772 (5th Cir. 1983).

²⁶ *Petrou Fisheries, Inc. v I.C.C.*, 727 F.2d 542 (5th Cir. 1984).

²⁷ Ex Parte No. 399, *Cost Recovery Percentage* (not printed), served December 23, 1983.

²⁸ Ex Parte No. 399, *Cost Recovery Percentage* (not printed), served September 27, 1984.

²⁹ 49 U.S.C. 10707a(e)(2)(B).

³⁰ *Potomac Electric Power Co. v I.C.C.*, _____ F.2d _____ (D.C. Cir. 1984). Also see, *Arkansas Power & Light Company v I.C.C.*, 725 F.2d 716 (D.C. Cir. 1984).

³¹ Ex Parte No. 394 (Sub-No. 1), *Cost Ratio for Recyclables* — 1983 Determination.

³² No. 39639, *Vulcan Materials Company v Alton and Southern Railway Company, et al.*, No. 39647, *Newell Recycling Co., Inc. v Norfolk Southern Corporation, et al.*, and No. 39690, *Schuykill Metals Corporation v Kansas City Southern Railway Company, et al.*



Eight states have been certified by the Commission to regulate intrastate rail traffic.³³ Nine others are directly regulated by the Commission,³⁴ while no state regulation exists in eight states and the District of Columbia.³⁵ Twenty-two states are provisionally certified, pending permanent certification, and fourteen of those whose applications had been reviewed and initially decided by the end of the fiscal year were granted time extensions for the resolution of remaining problems.

Railroads may protest state regulatory actions that deviate from Federal law or practice. During the fiscal year, numerous petitions for Commission review of actions taken by state transportation or regulatory commissions were filed. The overwhelming majority of these petitions concerned decisions of the Railroad Commission of Texas, which had consistently refused to follow Federal law and practice. All of these petitions were granted. Texas' application for certification was denied and its provisional certification was revoked.³⁶

The Commission instituted a rulemaking³⁷ proceeding in which it sought alternatives to changes in the boxcar

car-hire and car-service rules made in its *Boxcar Exemption* decision.³⁸ A court decision on the *Boxcar Exemption* case³⁹ affirmed the most significant rates aspects of the exemption, but vacated the car-hire component and a part of the rates component dealing with joint rates. The Commission and the Solicitor General are seeking certiorari.

The Commission also approved interim modifications and an extension of time to facilitate negotiation of a revised agreement on the tank car allowance formula for shipper-owned or leased railroad cars.⁴⁰ A pending complaint by an association of owners of private, covered hopper cars raises the issue of carrier-versus-shipper control of the cars used by railroad companies.⁴¹

The Commission has decided to re-examine its 1977 *Indiana Harbor* decision⁴² that requires railroads to use an equalization rule rather than establish separate charges for the switching of private cars to and from repair facilities, if the use of private cars in the furtherance of their common carrier obligations produces more than *de minimis* revenues.⁴³ The placement of blanket, ultimate liability on certain carriers for the switching of private cars to and from repair facilities has been held to be an unreasonable practice.⁴⁴

³³ Virginia was certified earlier. The seven additional states are Arkansas, Mississippi, New Hampshire, North Dakota, South Carolina, Tennessee, and West Virginia. Earlier Illinois was scheduled to be the first state certified and Florida was tentatively certified subject to conditions. However, their certifications are not yet final.

³⁴ Already in that category were California, Connecticut, Delaware, Nevada, New Jersey, North Carolina, Pennsylvania, and Wyoming. Ohio requested ICC assumption of intrastate rail rate regulation, and jurisdiction was assumed in Ex Parte No. 388 (Sub No. 25) *Intrastate Rail Rate Authority* — Ohio (not printed) served October 21, 1983. Mississippi earlier had lost jurisdiction, but reapplied and has been certified.

³⁵ These states are: South Dakota, at its request; and Alaska, Arizona, Hawaii, Maine, Massachusetts, Rhode Island, and Vermont, which, with the District of Columbia did not request certification.

³⁶ Ex Parte No. 388 (Sub No. 31) *State Intrastate Rail Rate Authority* — Texas (not printed) served April 20, 1984.

³⁷ Ex Parte No. 346 (Sub No. 19) *Boxcar Car Hire and Car Service*, served June 27, 1984.

³⁸ *Exemption from Regulation — Boxcar Traffic*, 367 I.C.C. 746 (1983).

³⁹ *Brae Corp v. United States*, 740 F.2d 1023 (D.C. Cir. 1984).

⁴⁰ Ex Parte No. 328 *Investigation of Tank Car Allowance System* (not printed) served May 25, 1984.

⁴¹ No. 39169 *Shippers Committee, OT-5 v. The Ann Arbor Railroad Company et al.*

⁴² *General American Transp. Corp v. Indiana Harbor Belt Railroad Company*, 357 I.C.C. 102 (1977).

⁴³ No. 35404 *General American Transp. Corp v. Indiana Harbor Belt Railroad Co.* (not printed) served October 9, 1984.

⁴⁴ *Evans Products Co. v. I.C.C.* _____ F.2d _____ (7th Cir. 1984).

The Commission denied a petition to postpone for three years a statutory provision,⁴⁵ which became effective on January 1, 1984, and which limited collective ratemaking actions to "direct connector" carriers.⁴⁶ This and other, relatively new restrictions have limited rail collective ratemaking actions to railroad companies directly participating (i.e., direct connectors) in joint rates. Protective provisions for the collective consideration of broad tariff changes to national packaging, shipping, and classification rules have been continued, however, pending review of the applicable collective ratemaking agreement.⁴⁷

Approval of modified agreements filed by three railroad rate bureaus⁴⁸ was denied during fiscal year 1984, but antitrust immunity was extended pending the filing and approval of further modifications.⁴⁹ A court affirmed a Commission decision which dismissed the complaint of a non-union, former rail rate bureau employee as one reserved for arbitration.⁵⁰ The Commission also dismissed two similar complaints filed by managerial employees of two railroad rate bureaus.⁵¹

Ten shipper agreements for antitrust protection for the negotiation of car

compensation are currently on file with the Commission.⁵² During the fiscal year, one was approved,⁵³ one was conditionally approved twice,⁵⁴ and a newly filed agreement is pending.⁵⁵ The remainder were approved prior to fiscal year 1984.

Finally, the Commission formed a rate regulation conference group last fiscal year to address revenue adequacy, maximum rate guidelines, and other rail rate regulation issues. It is part of a broader conference of shippers and railroad companies which was instituted to gather and analyze information about the effect of recent railroad regulatory reforms, and to offer a forum for the discussion of problem areas by those parties who may be directly affected.⁵⁶

Joint Rate Surcharges and Cancellations⁵⁷

Fiscal year 1984 marked the fourth year that railroad companies were able to utilize the surcharge and joint rate cancellation provisions of the Staggers

⁴⁵ 49 U.S.C. 10706(a)(3)(B).

⁴⁶ Ex Parte No. 447. *Petition to Delay Applic. of Direct Connector Requirement*, 367 I.C.C. 886 (1983).

⁴⁷ Section 5b Application No. 5. *Railroad Interterritorial Agreement* (not printed) served January 4, 1984.

⁴⁸ Western Railroad Traffic Association; Traffic Executive Association; Eastern Railroads; and the Southern Freight Association.

⁴⁹ Western Railroads — Agreement, 11 C.C. 2d 131 (1984).

⁵⁰ *Wash. v. United States*, 723 F.2d 570 (7th Cir. 1983).

⁵¹ Finance Docket No. 30303. *Labor Protective Conditions Applicability — Southwestern Freight Bureau Employees* (not printed) served June 12, 1984; and Finance Docket No. 30303 (Sub. No. 1). *Labor Protective Conditions Applicability — North Pacific Coast Freight Bureau-Pacific Southcoast Freight Bureau Employees* (not printed) served September 21, 1984.

⁵² Last year, Section 10706(a)(5)(A) Application Nos. 1, 2, and 4 were approved and No. 3 was denied. They inadvertently were reported as pending.

⁵³ Section 10706(a)(5)(A) Application No. 9. *The Fertilizer Institute* (not printed) served January 6, 1984.

⁵⁴ Section 10706(a)(5)(A) Application No. 6. *Institute of Shortening and Edible Oils, Inc.* (not printed) served December 7, 1983, and May 1, 1984.

⁵⁵ Section 10706(a)(5)(A) Application No. 10. *U.S. Clay Producers Traffic Association, Inc.*

⁵⁶ Ex Parte No. 456. *The Staggers Rail Act of 1980 Conference of Interested Parties* (not printed) served September 14, 1984.

⁵⁷ This section fulfills the requirements of Section 217(c)(1) of the Staggers Rail Act of 1980 (P.L. 96-448) for the Commission to report in its Annual Report to Congress on the following concerning joint rate surcharges and cancellations: (a) the effect on shippers, ports, Class II and Class III rail carriers, railroad employees, etc.; (b) the number of surcharges, revenue collected from them, surcharge cancellations, and the number of joint rate cancellations by the Consolidated Rail Corporation and all other rail carriers; and (c) operation of special remedies available to Class II and Class III rail carriers under Section 217.



Rail Act.⁵⁸ The primary purpose of these provisions was to provide railroads with a mechanism by which they may obtain rapid relief from non-compensatory divisions of rates, and to permit rail carriers to earn an adequate return from light-density-line service.

The provisions authorize individual railroads unilaterally to impose a surcharge, or cancel a joint rate, when the joint rate does not provide the railroad with 110 percent of its variable costs. This general surcharge provision was scheduled to expire by the end of fiscal year 1983, but the Commission extended the provision for a one-year period in response to a petition. Individual rail carriers also are authorized unilaterally to impose a surcharge on traffic originating or terminating on light-density lines when existing rates do not provide revenues adequate to cover 110 percent of their variable costs plus 100 percent of the reasonably expected costs of continuing to operate the line. The statute imposes no expiration date on light-density surcharges.

For purposes of reporting the extent of surcharge activity, the Commission counts as one surcharge the application of one or more surcharge amounts to a particular category of traffic, as defined by a surcharge tariff. These traffic categories may be defined as narrowly as a single commodity moving between specified points, or as broadly as all interline traffic originating or terminating on a rail carrier's line. On this

basis, the Nation's railroads filed 27 new surcharges and negative surcharges that became effective during fiscal year 1984 (See Appendix B, Table 15), as compared to 64 surcharges filed in fiscal year 1983 and 117 surcharges filed in fiscal year 1982. While the fiscal year 1984 figure represents a decrease in the total number of new filings, there were 16 revisions to existing surcharges and four surcharge cancellations during the year. The estimated annual revenues associated with these surcharges and negative surcharges total \$131,500 and (\$224,500), respectively, for a net total of (\$113,000). These small surcharge totals reflect reduced surcharge activity during the last year in which commodity surcharges could be imposed.

A majority of new surcharges filed with the Commission were commodity-oriented. Of these, 15 consisted of surcharges imposed on specific commodities for the generation of additional revenues, while three constituted negative or allowance surcharges imposed presumably in response to surcharges imposed by other railroad companies.

The principal commodities for which surcharges were imposed included canned goods (the Norfolk & Western Railroad) and clay or kaolin mixed with water (Conrail and the Delaware & Hudson Railroad). Principal commodities for which allowance or negative surcharges were applied included brandy, vermouth, wine, and sparkling wine (Conrail), and plywood and particle board (The Ashley, Drew & Northern Railroad).

Six surcharges and two negative surcharges were applied on rail traffic originating or terminating on light-density lines and, of these, five surcharges and

⁵⁸ Section 10705a of Title 49, United States Code, introduced by the Staggers Rail Act, effective October 14, 1980.

one negative surcharge were imposed by Class II and Class III carriers. The estimated annual revenues to be generated by light-density-line surcharges total \$16,200.

Conrail filed two new commodity, and one new light-density, surcharges in fiscal year 1984. In addition, Conrail filed eight revisions to previous surcharges and cancelled four commodity surcharges. Revenue estimates indicate that the decline in the number of Conrail surcharge filings (17 in fiscal year 1982 and six in fiscal year 1983) reflects Conrail's continued use of provisions of the Northeast Rail Service Act of 1981⁵⁹ to gain relief from branch-line losses.

Railroads other than Conrail filed eight surcharge revisions, and the most active of these carriers filing new surcharges during the fiscal year were the Canery, Fork & Western, New York, Susquehanna & Western, and the Norfolk and Western railroads. The revenues associated with these new surcharges were \$126,300.

In response to a petition, the Commission proposed an industry-wide exemption to permit a railroad's filing of negative surcharge allowance tariffs without the concurrence of other carriers.⁶⁰ The Commission also allowed

light-density surcharges to be applied to single-line as well as joint-line traffic. To compute more accurately the reasonably expected costs for these surcharges, regulations were modified to exclude overhead traffic costs and revenues from such traffic.⁶¹

Five joint-rate cancellations were brought before the ICC's Suspension Board during fiscal year 1984, down sharply from the previous fiscal year's 33 cancellations. All but one were allowed to go into effect. Relative to its disposition of these cancellations, the Commission interprets the applicable provisions of Section 10705a of the Staggers Act as generally providing railroads with the right to cancel joint rates whenever the division of revenue affords a carrier a revenue-to-variable-cost ratio of less than 110 percent. When the cancelling railroad's revenue-to-variable-cost ratio exceeds that level, the Commission will consider Section 10705a cancellations under the public-interest standard of Section 10705(e), which historically has governed joint rate cancellations. Because the revenue-to-variable-cost ratios for many joint rates subject to cancellation exceeded 110 percent, all cancellation cases during the past two fiscal years were decided under Section 10705(e).

Only one light density line surcharge was brought before the Commission during fiscal year 1984 — down from six brought to the Commission during the prior fiscal year. That case resulted in the cancellation of the surcharge.

⁵⁹ PL 97-35.

⁶⁰ An extended statutory period permitting filings expired on September 30, 1984. Docket No. 39777, *Negative Surcharge Tariffs — Exemption* (not printed), served August 30, 1984.

⁶¹ Ex Parte No. 402, *Reasonably Expected Costs*, ICC 2d _____ (1984).



As part of the Commission's surcharge and cancellation study, a questionnaire has been mailed to selected shippers and rail carriers in an effort to determine the extent to which rail traffic was affected by cancellations between calendar years 1981 and 1983. The study will focus on shipper complaints concerning the elimination of transportation alternatives, the use of circuitous, less efficient rail routes, increased transportation costs, and the impairment of the ability of shippers to enter into contracts with certain rail carriers.⁶²

Acquisition

On March 16, 1984, the Gulf and Mississippi Railroad Corporation, not currently an ICC-regulated carrier, filed a petition to exempt its proposed purchase of 713 miles of track located primarily in eastern Mississippi, but also including short rail segments reaching into parts of Alabama and Tennessee. The involved track constitutes the southern portion of the former Gulf, Mobile and Ohio Railroad Company line that was purchased by the Illinois Central Gulf Railroad in 1972. The Commission has requested public comment on the impact of the proposed transaction.⁶³

Abandonments

During fiscal year 1984, railroad line abandonments were filed with the Commission not only under the pertinent provisions of the Interstate Commerce

Act, but also under two other statutes⁶⁴ affecting only Conrail and bankrupt railroads (including the Chicago, Milwaukee, St. Paul and Pacific Railroad Company).

Conrail continued an active abandonment program that began with the enactment on August 13, 1981, of the Northeast Rail Service Act of 1981 (NERSA).⁶⁵ Last fiscal year, Conrail filed 358 applications to abandon 1,208 miles of line. Of that total, 320 applications involving 1,024 miles of track were granted in full or in part, and 29 applications involving 141 miles of track are pending before the Commission. Four applications involving 54 track-miles were dismissed after Conrail and interested parties reached an agreement for the sale of various lines, or accepted Commission-imposed terms of sale. Sixteen applications involving 83 track-miles have offers of financial assistance pending. At the end of the fiscal year, an additional 33 notices of insufficient revenues involving 149 track-miles remained on file with the Commission, an indication that applications to abandon rail lines of which the 149 miles of track are a part will be filed in fiscal year 1985.

Concerning abandonments proposed by bankrupt railroad companies, the Commission recommended to the Reorganization Court overseeing the financial affairs of the Chicago, Milwaukee, St. Paul and Pacific Railroad

⁶² Standards for Intramodal Rail Competition, served July 7, 1983.

⁶³ Finance Docket No. 30439, Gulf & Mississippi Railroad Corporation v. Purchase (Portion) Exemption, Illinois Central Gulf Railroad Company (not printed), served June 26, 1984.

⁶⁴ Northeast Rail Service Act of 1981 and Milwaukee Railroad Restructuring Act.

⁶⁵ P.L. 97-35.

the authorization for abandonment of a 29-mile rail segment, and the denial of abandonment authorization for a five-mile segment.

In an effort to rationalize their systems, other railroads filed a total of 113 abandonment applications involving 2,659 miles of track. At the end of fiscal year 1984, 40 applications for 1,347 miles of proposed abandonments and five notices of intent to abandon 86 miles were pending before the Commission. Decisions were issued on the merits of 108 applications involving 2,645 miles. Of those 108 decisions, 97 applications involving 2,032 miles were granted, six involving 543 miles were denied, and five applications involving 69 miles of track were dismissed at the request of the railroads that originally proposed them.

During the fiscal year, 29 abandonment applications involving 411 miles of track were granted because they were unopposed. In cases where abandonment proposals were opposed, the Commission declined to investigate 49 applications involving 825 miles of track, examined under its modified procedures 30 applications involving 903 miles of track, and set for oral hearings eight proposals involving 602 miles of rail lines.

Fourteen offers of financial assistance — 13 to purchase rail lines and one to subsidize continued operations — were made by various parties interested in maintaining operations over various portions of 604 miles of track proposed for abandonment. At the end of the fiscal year, three offers involving 77 track-miles were pending. Five rail lines were sold during the year, resulting in the transfer of 41 miles of track.

Numerous railroads filed exemption requests for lines that had been out of service two years or more, and which

had not generated any shipper complaints because of the inoperative status of the lines, under special notice-of-exemption procedures provided by Commission regulations.⁶⁶ In fiscal year 1984, 100 such notices involving 581 miles of track were filed with the Commission. Of these, 92 notices involving 530 track-miles were granted, and six notices relative to 15 miles of rail line were pending at the end of the year.

Rail lines that do not meet the criteria for a notice exemption may be abandoned through individual exemption petitions. In fiscal year 1984, 65 petitions were filed with the Commission concerning 616 miles of track proposed for abandonment, 54 petitions were granted involving 387 track-miles, one petition involving fewer than two miles of rail line was dismissed, and 13 petitions covering 238 miles of track were pending at the end of the year.

In major policy decisions, the Commission affirmed its method of opportunity cost calculation and its practice of considering opportunity costs as separate and distinct elements to be balanced with other factors in evaluating the merits of abandonment applications. The Commission's costing methodology was revised significantly with respect to the computation of the costs of capital and equipment,⁶⁷ and the Commission increased the rate of return to be used in the computation of railroad opportunity costs in abandonment proceedings. Under the new standard, a railroad must earn a 22.3-percent return

⁶⁶ 49 C.F.R. 1152.50.

⁶⁷ *Revision of Abandonment Regulations*, 367 I.C.C. 831 (1983).



on the net liquidation value of those of its assets invested in a line in order to avoid the creation of an opportunity cost.⁶⁸

The Commission also modified its regulations governing offers of financial assistance last fiscal year to enable continued service over rail lines proposed for abandonment.⁶⁹ The most significant modification simplified the offer process by reducing the amount of evidence required to demonstrate that an offer is reasonable, and that an offeror is financially able either to acquire and operate a rail line, or to subsidize continued operations on the line. The ICC's modified regulations permit transfers between separate but affiliated corporations during the period proscribed for the discontinuance of service, and for sales after purchase.

In addition to Commission exemptions for rail lines which have been out of service for at least two years, subject to certain conditions and standard labor-protection provisions,⁷⁰ newly adopted rules require that, instead of the ICC, a railroad seeking an abandonment must serve notice concerning environmental and energy matters upon designated state environmental agencies.⁷¹ Recent rules changes also require that a party seeking the imposition of a public use condition must justify its request by showing the public importance of the conditions.⁷²

The Commission denied abandonment requests in cases where: (1) a trend toward rail line profitability was shown to exist;⁷³ (2) future line profitability was anticipated and serious, adverse consequences could be expected for communities along a line proposed for abandonment;⁷⁴ or, (3) a notice of service discontinuance or a notice of abandonment intention was improperly made.⁷⁵

As an illustration of the Commission's consideration of potential, detrimental community effects that could result from proposed rail-line abandonments, the ICC denied the abandonment of a South Dakota line because the railroad proposing abandonment was found to be experiencing increased traffic and revenues, and because a reliance on alternative trucking service alone — had the abandonment been approved — would have subjected communities along the line to significantly increased transportation costs.⁷⁶

During fiscal year 1984, no applications for the forced sale of lines to be abandoned were filed under the Commission's Feeder Railroad Development Program.⁷⁷

⁶⁸ Abandonment of R. Lines — Use of Opportunity Costs, 367 I.C.C. 734 (1983).

⁶⁹ Abandonment of R. Lines & Discontinuance of Serv., 367 I.C.C. 808 (1983).

⁷⁰ Ex Parte No. 274 (Sub No. 84), Exemption of Out of Service Lines (Discontinuance of Service and Trackage Rights) (not printed), served April 20, 1984.

⁷¹ Notices in Abandonment and Rail Exemption Procedure, 11 I.C.C. 2d 11 (1984).

⁷² Rail Abandonments — Public Use Condition, 11 I.C.C. 2d 1 (1984).

⁷³ Docket No. AB-6 (Sub No. 174), Burlington Northern Railroad Company — Abandonment — in Modoc and Siskiyou Counties, CA (not printed), served May 4, 1984.

⁷⁴ Docket No. AB-55 (Sub No. 72), Seaboard System Railroad, Inc. — Abandonment — in Bacon County, GA (not printed), served December 22, 1983.

⁷⁵ Docket No. AB-52 (Sub No. 26), The Atchison, Topeka and Santa Fe Railway Company — Discontinuance of Service — Harper and Sumner Counties, KS (not printed), served April 27, 1984.

⁷⁶ Docket No. AB-1 (Sub No. 154), Chicago and North Western Transportation Company — Abandonment — in Stanley, Jones, Hauken, Jackson and Remington Counties, SD (not printed), served February 22, 1984.

⁷⁷ The Commission's regulations governing the Feeder Railroad Development Program appear at 49 C.F.R. Part 1151.

Exemptions

The Commission continued to use its rail-exemption authority to reduce unnecessary regulation during the past fiscal year. More than 170 exemptions of financial transactions were granted for acquisitions, new operations, lease and trackage rights agreements, and securities issuances,⁷⁸ and a class exemption for service discontinuance and trackage rights over out-of-service lines was authorized.⁷⁹ These individual and class exemptions were granted where the transportation or public impact was determined to be minimal, or where regulation was found to be unnecessary to protect shippers from abuses of market power.

The Commission also granted more than 90 individual exemptions from rate regulations to allow payments of reparations, waivers of undercharges, and other charge adjustments. Many of these exemptions were granted as accommodations to rail carriers and shippers that had entered into rate contracts by permitting the contracts' rates to apply to limited numbers of shipments transported prior to effective contract dates.

Previously granted, industrywide exemptions for boxcar traffic⁸⁰ and export coal⁸¹ were in effect during fiscal

year 1984,⁸² and a majority of the Commission, Chairman Taylor dissenting, specifically reaffirmed the partial exemption of boxcars from car-hire regulation by concluding that the exemption would foster more efficient car use without detriment to car owners.⁸³ To allow small railroads additional time for the negotiation of car-hire agreements, the Commission postponed until July 1, 1985, the effective date of the car-hire exemption for cars owned or leased by Class III railroads.⁸⁴ In a related matter, the Commission instituted a separate rulemaking proceeding for the receipt of proposals for alternative approaches for improved boxcar use through car-hire and car-service regulation modifications.⁸⁵ A partially adverse court decision on the boxcar exemption was stayed pending the Commission's filing of a petition for a writ of certiorari⁸⁶ and a court reversed the ICC's export coal exemption near the close of the fiscal year.⁸⁷ The Commission and the Solicitor General are now seeking certiorari.

The Commission granted three additional industrywide exemptions during the fiscal year, two of which were for the rail transportation of frozen food⁸⁸ and poultry, meat, and dairy products.⁸⁹

⁷⁸ The boxcar exemption became effective January 1, 1984, except that application of the car-hire aspect of the exemption to cars owned or leased by Class III railroads has been postponed to July 1, 1985. The export coal exemption took effect September 12, 1983.

⁷⁹ *Exemption from Regulation — Boxcar Traffic*, 367 I.C.C. 747 (1983).

⁸⁰ *Ex Parte No. 346 (Sub-No. 8), Exemption from Regulation — Boxcar Traffic* (not printed), served June 27, 1984.

⁸¹ *Ex Parte No. 346 (Sub-No. 19), Boxcar Car Hire and Car Service*, advance notice of proposed rulemaking published July 3, 1984, at 49 Fed. Reg. 27333.

⁸² *Brace Corp. v. United States*, 740 F.2d 1023 (D.C. Cir. 1984) rehearing denied Aug. 27, 1984.

⁸³ *Coal Exporters Ass'n v. United States*, No. 83-1629 (D.C. Cir. Sept. 18, 1984).

⁸⁴ *Exemption from Regulation — Rail Transp. Frozen Food*, 367 I.C.C. 859 (1983).

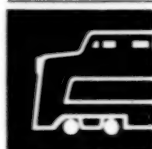
⁸⁵ *Ex Parte No. 346 (Sub-No. 18), Exemption from Regulation — Poultry, Meat and Dairy Products* (not printed), served June 28, 1984.

⁷⁸ Many abandonments and service discontinuances were also exempted, as discussed in the Abandonments section of this report.

⁷⁹ *Ex Parte No. 274 (Sub-No. 8A), Exemption of Out of Service Lines (Discontinuance of Service and Trackage Rights)* (not printed), served April 20, 1984.

⁸⁰ *Exemption from Regulation — Boxcar Traffic*, 367 I.C.C. 424 (1983).

⁸¹ *Railroad Exemption — Export Coal*, 367 I.C.C. 570 (1983).



These latter exemptions essentially completed the deregulation of rail transportation of all agricultural and food products, save for grain and sunflower seeds. Since these newly exempted commodities are primarily transported by truck, overall truck-rail competition for their transportation is expected to increase.

A majority of the Commission also voted to exempt containerized intermodal service provided by rail-affiliated and other motor carriers, thus eliminating from regulation the entire through-movement of trailer-on-flatcar/container-on-flatcar traffic.⁹⁰ This proceeding has been pending since February 1981, and although we hope to render a decision in this case in early 1984 (see p. 70, 1983 Annual Report), we are now hopeful of having a decision to vote on in early 1985.

Passenger Service

Last fiscal year, the National Rail Passenger Corporation (Amtrak) applied for Commission prescription of compensation for the facilities, track, and services of the Metro-North Commuter Railroad Company and the New York Metropolitan Transit Authority,⁹¹ involving rail lines and related facilities extending 74 miles from New York City's Grand Central Terminal to Poughkeep-

sie, New York. The Commission assumed jurisdiction over this application in August 1984 and is awaiting receipt of public comments.

During fiscal year 1984, designated agents of the ICC's Office of Compliance and Consumer Assistance issued 13 emergency orders to prevent rail-passenger service interruptions through the permission granted to Amtrak passenger trains to utilize alternative rail routings while they were enroute to a destination. Such orders become necessary whenever a railroad company operating an Amtrak train cannot take its normal route because of circumstances beyond its control, and an alternative route exists over the lines of a connecting railroad.⁹²

In another passenger-railroad matter, an Administrative Law Judge granted an application filed by the Southern Pacific Transportation Company for the discontinuance of commuter service to the city of Los Angeles, California.⁹³ That decision has been appealed to the Commission.

Freight Car Service

The continued expansion in the Nation's economy — which began in the last quarter of fiscal year 1983 as reflected by an eight-percent increase in traffic over the same period in fiscal year 1982 — resulted in further substantial reductions in freight car surpluses. The average daily surplus at the end of December 1983 was 179,206 cars. That figure dropped to a daily average of 111,690 cars by the end of September

⁹⁰ Ex Parte No. 230 (Sub-No. 6), *Improvement of TOFC/COFC Regulation (Railroad Affiliated Motor Carriers and Other Motor Carriers)* (decided at open voting conference on September 20, 1984; written decision in preparation). This exemption complements the exemption of railroad-provided intermodal service granted in *Improvement of TOFC/COFC Regulations*, 364 I.C.C. 731 (1981).

⁹¹ Finance Docket No. 30426, *National Rail Passenger Corporation Application under Section 403(a) of the Rail Passenger Service Act*.

⁹² 45 U.S.C. 562(c).

⁹³ Finance Docket No. 30123, *Southern Pacific Transportation Company — Discontinuance of Passenger Train Service in Ventura and Los Angeles Counties, CA* (not printed) served December 2, 1983.

1984, for a daily average during the fiscal-year period of 142,702 cars.

Total railroad freight car ownership decreased throughout fiscal year 1984. On October 1, 1983, Class I railroads reported the combined-fleet ownership of 1,018,171 cars, but by October 1, 1984, that ownership level had dropped to 966,823 cars, a total reduction of 51,348. This decrease was especially significant in that it marked the first time in modern railroad history that railroad car ownership has fallen below the one-million-car level.

A total of 1,228 cars were added to the rail fleet during the past fiscal year, while 52,576 cars were retired from service. The entire car fleet of Classes I, II, and III railroads, private car companies, and shippers consisted of 1,500,545 cars, an overall reduction of 52,170 cars from the prior fiscal year.

The average carrying capacity of a freight car placed into rail service during fiscal year 1984 was 90 net tons, an increase of five net tons over per-car tonnage figures registered ten years ago. While the aggregate carrying capacity of cars installed was 110,520 net tons, there was an aggregate capacity loss of 3,674,952 net tons owing to the retirement of cars accounting for 3,785,472 net tons of capacity.

Fiscal year 1984 freight-car loadings totaled 20,321,864, or an 11.3-percent increase over the fiscal year 1983 car-loading total of 18,263,523. Relative to

individual commodity loadings, coal ranked first in number, with 5,961,410 coal-loaded cars accounting for 29.3 percent of total cars loaded, or an increase of 15.3 percent over the 5,168,880 cars loaded in fiscal year 1983. The second heaviest commodity loadings were those for grain — 1,450,617 cars — for an 11.2-percent increase over the 1,304,574 cars loaded with grain in fiscal year 1983. Cars carrying chemicals and allied products ranked third in total loadings with 1,274,446 cars, an increase of 10.8 percent over the fiscal year 1983 loading figure of 1,150,285 cars.

The greatest percentage increase in fiscal year car loadings — 26.4 percent — occurred in the loading of 993,591 cars with motor vehicles and equipment, as compared to 785,742 such car loadings in fiscal year 1983. Last fiscal year saw a 10-percent decrease in cars loaded with food and kindred products, accounting for 564,660 cars versus 627,362 cars similarly loaded during the prior fiscal year. Grain mill product loadings also decreased, by eight percent, with 554,263 fiscal-year 1984 car loadings compared to a fiscal-year 1983 total of 602,299 cars.

In fiscal year 1984, there were 2,597,021 flatcars loaded with 4,514,562 trailers/containers, a 16.8-percent increase over fiscal year 1983's total of 2,224,064 similarly loaded flatcars transporting 3,859,803 trailers/containers.

The locomotive ownership of Class I railroads on October 1, 1983, consisted of a total of 25,913 units, while such ownership was down to 24,652 units — a 1,261-unit reduction — on October 1, 1984. At the end of fiscal year 1984, Class I railroads had 108 diesel-freight, 91 multi-purpose, and eight switch locomotives on order.



During fiscal year 1984, the Commission issued 10 emergency and rerouting orders in the furtherance of railroad operations. The majority of these provided for the continuation of essential rail services to shippers located on the lines of the bankrupt Rock Island and the Chicago, Milwaukee, St. Paul and Pacific Company railroads.

Securities

Railroad companies filed 18 applications for the issuance of securities or for the assumption of securities obligations during fiscal year 1984. Railroads were authorized to issue 14,082,000 shares of stock for various purposes, bonds for \$375,000,000 in principal amounts, and notes for \$800,000 in principal amounts. They were also authorized to assume the obligation and liability of \$5,500,000 principal amount of bonds and \$228,290,000 principal amount of equipment-trust certificates.



TRUCKING COMPANIES

General Financial Condition

Operating results for 100 of the trucking industry's largest companies for the 12 months ending June 30, 1984, improved substantially in comparison with results for the 12-month period ending June 30, 1983, because of the recent strong economic recovery. Net income rose 61.7 percent to \$407.4 million, and the rate of return on shareholders' equity increased to 12.93 percent from 8.76 percent. Operating revenues increased 13.9 percent to \$17.4 billion as revenue tons hauled rose 11.5 percent. The industry's operating ratio, an indication of overall efficiency, dropped favorably to 95.8 percent from the 97.0-percent level of the prior fiscal year.

Despite substantial improvement in the performance of the industry as a whole, some individual trucking companies experienced financial difficulties. This was to be expected as trucking firms continue to make the transition from a protected economic environment to a competitive one. While the problem was compounded somewhat by the economic recession from which the nation is now emerging, it should be noted that, despite hardships experienced by some trucking companies, the reforms brought about by the Motor Carrier Act of 1980 enabled others to enter new markets and continue to serve shipper needs.

The trucking industry appeared to continue to adjust well to deregulation in fiscal year 1984. Marketing came to be viewed as a more important function, and trucking firms accordingly offered more customized and timely services to shippers. New freedoms for contract service permitted under the Motor Carrier Act allowed companies to sign more contracts with shippers, and such con-

tract-carrier service is expected to continue to expand substantially in the future. Rate discounting is also expected to lessen, thus enabling trucking companies to fully realize the benefits of general rate increases granted during the past fiscal year.

Mergers and Unifications

Since the passage of the Motor Carrier Act of 1980, the trucking industry has become far more competitive as Commission restrictions against market entry have been markedly reduced. In recognition of this development, Congress authorized the Commission in Section 21 of the Bus Regulatory Reform Act of 1982 to exempt from its jurisdiction¹ motor finance transactions involving motor carriers of property. Procedures for implementation of that exemption authority were later adopted by the ICC for the evaluation of transactions proposed for exemption on an individual basis.² During fiscal year 1984, there were 433 petitions for property exemptions filed with the Commission, and the majority of these involved acquisitions of operating authority or of stock control of other regulated carriers.

Parties may also request ICC exemption for the permanent lease of operating authority, or for the merger or consolidation of two or more regulated trucking companies. Exemptions are granted if parties demonstrate that regulation is unnecessary to carry out the

¹ 49 U.S.C. 11343(e).

² *Procedures — Handling Exemptions Filed by Motor Carriers*, 367 I.C.C. 113 (1982).

National Transportation Policy, and that a transaction is either limited in scope or that regulation is unnecessary to protect shippers from the abuse of market power.³

The Commission proposed and approved a class exemption for motor finance transactions under which an individually proposed transaction could be consummated within 60 days after notice of the proposal had been published in the *ICC Register*.⁴ The exemption procedures limit opposition to an exemption proposal to those carrier employees who allege that they would be adversely affected by the transaction, and to those parties opposed to a grant of an exemption on anticompetitive grounds.

The Commission also proposed class exemption regulations as the means for the filing and processing of small-carrier transfers of property authority. Although small-carrier transfer applications are outside the scope of the exemption authority⁵, the use of the less burdensome exemption regulations as guidelines for processing such applications would do much to reduce regulatory burdens.

The Commission is not authorized to exempt transactions involving passenger carriers, so parties proposing finance transactions continue to use the Commission's formal application procedures.⁶ In the last fiscal year, the Commission approved 12 applications

for transactions involving passenger carriers, and all of these applications involved either the purchase of operating authority or the acquisition of stock control of one or more passenger carriers.

Under 49 U.S.C. 11343 the Commission is empowered to authorize motor carriers of property to pool or divide their traffic where pooling arrangements will be in the interest of better public service or improved operating efficiency, and where competition will not be unduly restrained. During the last fiscal year, 19 pooling applications were filed with the Commission, and it granted the request of one large household goods carrier to limit the scope of its pooling service to carrier-agents hauling traffic over distances of less than 1,700 miles.⁷

Rates

There was little litigation over rate matters between trucking companies and shippers during fiscal year 1984, and fewer than 20 rate complaints were received. Greatly increased competition and backhaul availability have maintained or depressed rate levels since implementation of the Motor Carrier Act.

The continuing need for collective consideration of trucking rates has become one of the major issues currently before the Commission. At an open conference held August 9, 1984, the Commission denied a request that antitrust immunity be withdrawn for freight-carrier collective ratemaking for rates on shipments under 1,000 pounds, and it decided to continue the

³ 49 U.S.C. 11343(e)(1).

⁴ Ex Parte No. 55 (Sub-No. 57), *Exemption of Certain Transactions Under 49 U.S.C. 11343* (not printed), served June 7, 1983, 48 Fed. Reg. 26485 (June 8, 1983). Approved at a Commission Open Conference, September 20, 1984.

⁵ Small carrier transfer applications are governed by 49 U.S.C. 10926, and the Commission's exemption authority is limited to transactions embraced in 49 U.S.C. 11341-11351.

⁶ See 49 U.S.C. 11343-11345(a) and 49 CFR 1182-1183.

⁷ No. MC-F-4901 and No. MC-F-6152, *United Van Lines, Inc. — Pooling Agreement Modification* (not printed), served June 5, 1984.



present immunity policy for motor carrier freight ratemaking activities.⁸

The Commission's decision was in response to a June 27, 1983, petition filed by the National Small Shipments Traffic Conference, Inc., and the Drug and Toilet Preparation Traffic Conference, Inc., which had requested the withdrawal of antitrust immunity for motor carrier collective ratemaking on shipments weighing less than 1,000 pounds. The Commission had solicited comments on the petitioners' request, and additionally asked for comments on whether the 1,000-pound level, or some other weight level, would be an appropriate breakpoint for the definition of "small shipments" in the context of its proceeding. The Commission also invited comment on whether antitrust immunity should be withdrawn from any specific areas of trucking rate bureau activity, or whether such immunity should be withdrawn altogether.

In reaching its decision, the Commission determined that there was insufficient evidence on the record to support eliminating antitrust immunity for motor carrier collective ratemaking. In order to facilitate Congressional oversight of the issue of antitrust immunity, the Commission certified to the Congress the complete public record of its proceeding.

By the close of fiscal year 1984, the Commission had provisionally approved most collective ratemaking agreements filed by the larger rate bureaus composed of general-commodity motor carriers of property. The Commission continues to examine several consolidated petitions filed by these larger, general-commodity bureaus in their attempts to expand the

territorial scope of their collective ratemaking activities.⁹ Rate bureau proponents contend that such expansion will permit better service for member carriers, many of which possess nationwide operating authority and have operations traversing existing regional rate bureau boundaries. One of these rate bureaus, the Middle Atlantic Conference, assumed certain responsibilities through merger with a steel carriers association during the past fiscal year.¹⁰

The Commission has considered a petition filed by nine motor carrier rate bureaus for the repeal of Commission rules governing the assessment of charges on shipments to or from private residences and similar locations, and requiring pre-notification before delivery may be made to those locations.¹¹ The petition was granted by decision served February 4, 1985.

While administering the general application of antitrust immunity to motor carrier rate bureaus, the Commission continued to reduce the areas in which collective ratemaking, under protection of the antitrust laws, could exist.

The Commission rejected certain tariff supplements which implemented some collectively produced, single-line rates,¹² and ordered the cancellation of certain tariff items on released rates

⁸ Ex Parte No. 297 (Sub-No. 7) Motor Carrier Rate Bureaus — Expansion of Collective Ratemaking Territory (not printed) served March 19, 1984.

¹⁰ Section 5a Application No. 23 Middle Atlantic Conference — Assumption of Steel Carriers Tariff Association Inc. Functions (not printed) served July 3, 1984.

¹¹ Ex Parte No. MC-97 (Sub-No. 2) Investigation into Practices of Motor Common Carriers of Property on Residential and Redelivered Shipments (not printed) served December 8, 1983.

¹² Suspension Board File No. M-71192 Collective Ratemaking Procedures Niagara Frontier Tariff Bureau November 5, 1984.

⁸ Ex Parte No. MC-172 Withdrawal of Antitrust Immunity for Collective Ratemaking on Small Shipments

which were determined to be in violation of regulations prohibiting such collective action in establishing released rates.¹³

The Commission also ordered the cancellation of all tariff items published according to classification proposals initiated by employees of the National Classification Committee (NCC) after May 26, 1981.¹⁴ This action was prompted by an earlier investigation into classification procedures.¹⁵ Carrier-initiated proposals continue to be permitted.

Responding to carrier needs to become more competitive in bidding for traffic, the Commission modified its common-carrier tariff system by adopting rules which reduced the generally applicable 30-day notice period for independent rate filings by truck companies and freight forwarders.¹⁶ Under the new rules, rate reductions and new rates may become effective on one day's notice, and rate increases may become effective on seven workdays' notice. These rules will significantly increase carrier flexibility in quoting rates.

The Commission also expanded the zone of rate freedom (ZORF) from 10 percent to 15 percent.¹⁷ The ZORF permits trucking companies and freight forwarders to reduce or increase rates by a certain percentage without regulatory

interference. The Commission may increase the zone a maximum of five percentage points during any one-year period if it finds that there is sufficient actual or potential competition to regulate rates, and that the public will benefit from the increased rate flexibility. The present economic climate of intensified competition was found to have warranted the proposed, maximum, five-percent increase in the ZORF to permit adequate rate flexibility in response to new market demands. The Commission also streamlined tariff filing requirements governing rates and charges filed according to ZORF authority.

Operating Rights

Competition among trucking companies in the surface transportation industry has significantly increased since passage of the Motor Carrier Act. The Commission has authorized over 12,000 new operations, and in most instances granted authority for broad, unencumbered motor carrier operations. The Motor Carrier Act established this policy to encourage competition and make possible more responsive operations.

New industry entrants may now obtain ICC motor carrier operating authority on the basis of evidence other than supporting statements from shippers,¹⁸ and the Commission has authorized numerous grants of operating rights for the transportation of general commodities (with exceptions).¹⁹

¹³ I & S No. M-30367, *Changes in Rates Including Rates Based on Released Valuations*, MAC (not printed), served October 9, 1984.

¹⁴ No. 39509, *Reclassification Procedures* — National Classification Committee (not printed), served May 17, 1984.

¹⁵ I & S No. MC-30360, *Reclassification of Pork Skins and Bacon Rinds*, NMFC (not printed), served August 4, 1983.

¹⁶ Ex Parte No. MC-170, *Short Notice Effectiveness for Independently Filed Motor Carrier and Freight Forwarder Rates* (not printed), served May 29, 1984.

¹⁷ Ex Parte No. MC-169, *Expansion of Zone of Reasonableness*, 367 I.C.C. 907 (1984).

¹⁸ See, e.g., No. MC-174537, *Sutherland Farmers Cooperative Company* — Common Carrier Application (not printed), served September 7, 1984, and No. MC-136087 (Sub No. 14), *J. C. Trucking, Inc. Extension — General Commodities in 48 States* (not printed), served July 11, 1984.

¹⁹ The commodities typically excepted from such grants are Classes A and B explosives, household goods, and commodities in bulk.



between all points in the United States (except Alaska and Hawaii).²⁰

The Commission continued to address the concerns of the courts and the motor carrier bulk transportation industry about issuance of general commodities authorities without a bulk commodities exclusion, by authorizing bulk commodities operations only upon finding a need for bulk service, and upon finding the applicant for authority to be fit, willing, and able to provide it.²¹ The Commission also applied the evidentiary standards of need and fitness, willingness, and ability when considering whether to grant specific commodity authority that includes a bulk service authorization,²² in accordance with a decision of the United States Court of Appeals for the Third Circuit.²³ A supplemental rulemaking proceeding has been instituted to reassess, on a factual basis, Commission policy concerning the propriety of bulk restrictions on motor carrier operating authority.²⁴ Comments were invited from the public

to develop a thorough and effective factual record concerning the bulk service restrictions issue.

The Commission also expanded motor carrier service options during fiscal year 1984 by deleting facilities restrictions from existing authorities which had limited authority to provide service only to a named plantsite.²⁵

Motor contract carriage has been significantly expanded during the past four years. Wide-ranging service authorizations now allow motor contract carriers to transport many types of freight, and service is typically permitted throughout the United States, except for operations in Alaska and/or Hawaii. Because of the Commission's new policies toward motor contract carrier authorization, contract carriers are now significant competitors for a greatly increased share of the transportation market of the 1980's.

Motor contract carrier "class" or "industrywide" permits authorize service for an entire class of shippers, or to an entire industry. These permits have been issued for the transportation of (1) household goods;²⁶ (2) household goods, furnishings and fixtures, and machinery;²⁷ (3) business and office machines and electronic manufacturing systems;²⁸ (4) transportation equip-

²⁰ See e.g. No. MC-171702 *Ace Trucking Co. — Common Carrier Application* (not printed), served September 4, 1984. No. MC-166482 *Reliable Express, Inc. — Common Carrier Application* (not printed), served April 19, 1984. No. MC-147118 (Sub-No. 4) *Tracy Transport, Inc. — Extension — 48 States* (not printed), served February 8, 1984. No. MC-172306 *McIntosh Enterprises, Inc. — Common Carrier Application* (not printed), served April 24, 1984. No. MC-149529 (Sub-No. 2) *All Ohio Trucking Co. — Common Carrier Application* (not printed), served February 8, 1984. and No. MC-171845 *Pam Transport Corporation Common Carrier Application* (not printed), served April 20, 1984.

²¹ No. MC-174025 *Kellebrew Trucking, Inc. — Common Carrier Application* (not printed), served August 1, 1984, and No. MC-1636509 (Sub-No. 2) *Delta Freight, Inc. — Extension — General Commodities Nationwide* (not printed), served September 12, 1984.

²² See No. MC-168912 *William C. Kolas, d/b/a Kolas Brothers Trucking — Contract Carrier Application* (not printed), served May 22, 1984, corrected decision served June 4, 1984, and No. MC-175448 *D & J Trucking of Frederic, Inc. — Common Carrier Application* (not printed), served September 5, 1984.

²³ *Port Norris v. ICC*, 729 F.2d 204 (3rd Cir. 1984).

²⁴ Ex Parte No. 55 (Sub-No. 43A) *Acceptable Forms of Requests for Operating Authority (Motor Carriers and Brokers of Property)* and Ex Parte No. MC-142 (Sub-No. 1) *Removal of Restrictions from Authorities of Motor Carriers of Property*, served July 2, 1984.

²⁵ See e.g. No. MC-148632 (Sub-No. 8) *Dixon Motor Freight, Inc. (not printed)*, served June 15, 1984. No. MC-143032 (Sub-No. 43) *Walco Transport, Inc. (not printed)*, served August 13, 1984, and No. MC-139994 (Sub-No. 4) *Jim and Bob Stencel Doing Business As Stencel Trucking* (not printed), served September 5, 1984.

²⁶ No. MC-87113 (Sub-No. 40) *Wheaton Van Lines, Inc. — Extension — Class of Contract Shippers* (not printed), served July 19, 1984.

²⁷ No. MC-120021 (Sub-No. 7) *The Cotter Moving & Storage Company — Extension — Contract Household Goods Service* (not printed), served August 6, 1984, modified decision served October 24, 1984.

²⁸ No. MC-170058 *Safeway Moving Systems, Inc. — Contract Carrier Application* (not printed), served September 27, 1984.

ment and buildings in sections.²⁹ (5) Mercer commodities and Classes A and B explosives;³⁰ and, (6) food and related products, tobacco products, textile mill products, lumber and wood products, furniture and fixtures, pulp, paper and related products, printed matter, chemicals and related products, rubber and plastic products, leather and leather products, clay, concrete, glass or stone products, metal products, machinery, and building materials.³¹

Motor contract carriers may also obtain permits to transport general commodities between points in the United States under contract(s) with manufacturers, distributors, and dealers of those commodities.³²

The Commission also approved new competitors for movements of United States government property — other than used household goods, hazardous or secret materials, and sensitive weapons and munitions³³ — upon an applicant's showing that it is fit, willing, and able to provide such transportation and to comply with applicable requirements.

As a result of the recent court-ordered breakup of the American Telephone & Telegraph Company, Inc., new authority was issued to a motor contract carrier which had been serving AT&T to permit

contracts with newly created regional telephone companies.³⁴

The trucking industry has continued to reshape itself in response to the Commission's changed regulatory role under the Motor Carrier Act. Contract carriers have converted their contract carrier permits into common carrier certificates so that they may serve a wider range of shippers,³⁵ and private carriers continue to seek for-hire motor carrier operating authority.³⁶

While operating authority is readily available, the Commission monitors the industry to ensure compliance with its regulations. In this regard, the Commission revoked an auto driveaway carrier's operating authority upon a determination that it had engaged in a massive program of consumer fraud and other abuses.³⁷ Another company's authority was suspended for six months for safety-fitness violations.³⁸ Where safety fitness is at issue, the Commission will not grant operating certificates or permits without specific evidence of an applicant's current compliance with Department of Transportation safety regulations,³⁹ and will deny operating

²⁹ No. MC 106398 (Sub-No. 1098) *NTC of America, Inc. Extension — Mobile Homes* (not printed) served July 27 1984.

³⁰ No. MC 133621 (Sub-No. 6) *Frontier Transportation Company Extension — Mercer Commodities* (not printed) served June 7 1984.

³¹ No. MC 157235 (Sub-No. 2) *Indiana Truck Lines, Inc. Extension — M. Commodity Groups* (not printed) served September 10 1984.

³² No. MC 109397 (Sub-No. 542) *In-State Motor Transit Co. Extension — Contract Shippers Nationwide* (not printed) served July 13 1984.

³³ See e.g. MC 173357 (A and B) *Dennis L. Clark, Inc. Common Carrier Application* (not printed) served July 20 1984 and MC 175146 *W. R. Drinkwater and Sons Trucking*

Common Carrier Application (not printed) served September 5 1984.

³⁴ MC 160039 (Sub-No. 1) *WER Enterprises, Inc.* (not printed) served July 17 1984.

³⁵ See e.g. MC 154897 (Sub-No. 3) *Bills Trucking Service, Inc.* (not printed) served July 13 1984.

³⁶ See e.g. MC 172314 *A B W, Inc. Common Carrier Application* (not printed) served July 20 1984.

³⁷ MC C-7287 *AAACon Transport, Inc. Investigation and Revocation of Certificate* (not printed) served August 7 1984.

³⁸ MC C-10802 *Federal Highway Administration v. W. J. Digby, Inc.* (not printed) served July 5 1984.

³⁹ MC 155217 (Sub-No. 1) *Mexico Express, Inc. Extension — General Commodities* (not printed) served June 21 1984 and further considered in a decision served October 25 1984.



authority when applicant is shown in violation of them.⁴⁰

International motor carrier licensing involving trucking companies operating out of Mexico remained a problem during fiscal year 1984. A statutory licensing moratorium currently prohibits the Commission from issuing certificates or permits to trucking firms domiciled in Mexico, or owned or controlled by Mexican citizens.⁴¹ In early September 1984, President Reagan extended the moratorium — which was to expire that month — for an additional two-year period ending September 19, 1986. The President's action was taken through a memorandum to the Office of the United States Trade Representative. Under the terms of the statute, the President has the option to revoke or modify the memorandum (as he did in a similar moratorium involving Canadian trucking firms) if the Government of Mexico chooses to ease its prohibition against United States motor carriers operating in Mexico.

Household Goods

During fiscal year 1984, the Commission substantially increased the number of contract carriage authorizations granted for the transportation of household goods, and many applicants

received industrywide contract carrier authority⁴² as a result of a fiscal year 1983 policy change which recognized the propriety of contract carrier authorization for broadly defined shipper categories.⁴³ The statutory criteria for contract carrier authority require either the assignment of equipment for continual periods, or the provision of service designed to meet the distinct need — as identified by shipper groups and not necessarily by specific members of a class — of contracting shippers.⁴⁴ Overruling previous interpretations in this area, the Commission concluded that the applicable statute requires only that equipment dedication actually takes place.⁴⁵ In addition, the Commission specifically recognized that contracting household goods shippers have distinctive group needs for contract carrier service,⁴⁶ and has authorized the acquisition of contract carrier authority for service to a class of ship-

⁴⁰ See e.g. No. MC-2934 (Sub-No. 161) *Aero Mayflower Transit Company, Inc. — Contract Carrier Application* (not printed) served January 18, 1984; No. MC-107012 (Sub-No. 868) *North American Van Lines, Inc. — Contract Carrier Application* (not printed) served December 22, 1983; and No. MC-15735 (Sub-No. 85) *Allied Van Lines, Inc. — Extension — Household Goods Contract Carriage* (not printed) served November 25, 1983.

⁴¹ No. MC-1745 (Sub-No. 17) *Interstate Van Lines, Inc. — Extension — Household Goods* (not printed) served September 16, 1983; appealed sub nom. *Global Van Lines, Inc. v. I.C.C.* No. 83-1983 (D.C. Cir.).

⁴² 49 U.S.C. 10102(14)(B).

⁴³ No. MC-63020 (Sub-No. 4) *John Henry McLaughlin — Extension — Class of Contract Shippers* (not printed) served September 18, 1984; No. MC-166364 (Sub-No. 1) *Mission Worldwide Moving, Inc. — Extension — Class of Shippers* (not printed) served August 31, 1984; No. MC-79658 (Sub-No. 133) *Atlas Van Lines, Inc. — Extension — Contract Operations* (not printed) served May 21, 1984; and No. MC-3328 (Sub-No. 5) *A. D. McMullen, Inc. — Extension — Household Goods* (not printed) served April 24, 1984.

⁴⁴ No. MC-110149 (Sub-No. 16) *Pan-American Van Lines, Inc. — Extension — Contract Service* (not printed) served June 1, 1984; No. MC-158651 (Sub-No. 1) *Graebel Van Lines, Inc. — Extension — Household Goods* (not printed) served April 4, 1984; No. MC-110149 (Sub-No. 1) *Global Van Lines, Inc. — Extension — Class of Shippers* (not printed) served March 7, 1984; and No. MC-87 (Sub-No. 40) *Wheaton Van Lines, Inc. — Extension — Class of Shippers* (not printed) served July 19, 1984.

⁴⁵ MC-136307 (Sub-No. 11) *Burkowitz Transport, Inc. (not printed)* served November 27, 1984.

⁴⁶ Ex Parte No. 55 (Sub-No. 43D) *Certification of Canadian or Mexican Ownership or Control of Applicants for Motor Common or Contract Carrier Authority*, 47 Fed. Reg. 42948 (September 29, 1982).

pers with evidence other than shipper support statements.⁴⁷

A major change in national household goods carriers' pooling arrangements occurred when United Van Lines, Inc. (United), a firm owned and controlled by carrier-agents, was authorized by the Commission to modify its existing pooling agreement.⁴⁸ The Commission's decision was based on United's substantiated claim that any one of its agents could undertake a haul of 1,700 miles without tendering the movement to a principal for further transportation. It is anticipated that this modification will enhance household goods carriers' marketing efforts, promote effective equipment utilization, and improve certain operational elements of long-distance moves.

Another significant pooling change occurred with the Commission's approval of the expansion of a pool handling government traffic, one of the major markets for the household goods moving industry.⁴⁹ The Commission based its decision to add 49 household goods carriers to a pool which had previously consisted of only 12 members

on its belief that the arrangement would result in operational efficiencies without undue restraints on competition. Because it was determined that future, additional pool participation could result in potentially adverse competitive consequences for U.S. Department of Defense traffic, the Commission decided that it would not continue the practice of routinely requiring such pooling arrangements to be open to the membership of additional carriers.

During the past fiscal year, the Household Goods Carriers' Bureau sought a declaratory order from the Commission concerning the lawfulness of the application of volume discount rates to the shipments of so-called "relocation" companies.⁵⁰ The Bureau's petition was denied on the grounds that any attempt by the Commission to categorize relocation companies could impede the development of that segment of the transportation industry. The Commission also stated that a determination of the status of a particular relocation company could properly be made only after that company's operations had been fully examined, and it reiterated past findings that the adjudication of individual cases is the only satisfactory method for establishing a record for a finding of predation, discrimination, or other unlawfulness.

One problem recently experienced by consumers involves the representation by some household goods movers of percentage discounts as binding estimates. This practice often results in a misperception among shippers that a firm, fixed price is being offered by a mover, when in fact the mover's final

⁴⁷ No. MC 74168 (Sub-No. 11): *Chaffin Van Lines, Inc. Contract Carrier Application* (not printed), served May 31 1984. No. MC-67234 (Sub-No. 98): *United Van Lines, Inc. Extension - Class of Contract Shippers* (not printed), served March 26, 1984. No. MC-52793 (Sub-No. 144): *Reins Van Lines Co. - Contract Carrier Application* (not printed), served February 9, 1984, and No. MC-68366 (Sub-No. 61): *Cornright Van Lines, Inc. - Contract Carrier Application* (not printed), served May 24, 1984.

⁴⁸ Nos. MC-F-4901 and MC-F-6152: *United Van Lines, Inc. Pooling Agreement Modification* (not printed), served June 5, 1984.

⁴⁹ No. MC-F-14708: *A&A Transfer and Storage Co., Inc. et al. - Pooling* (not printed), served November 1, 1983.

⁵⁰ No. 38757: *Household Goods Carriers' Bureau - Petition for Declaratory Order - Volume Rates for Relocation Companies* (not printed), served February 29, 1984.



charge will be affected by a number of considerations, including actual shipment weight. In such cases, the only guarantee afforded to a shipper is a certain percentage reduction in the applicable rate. In an effort to lessen consumer misunderstanding of binding-estimate programs, the Commission issued an administrative ruling⁵¹ which requires that a mover's binding estimate provide a "bottom line," guaranteed price for those items and services listed on the written estimate provided to the shipper. The Commission expects that this ruling will enhance consumer satisfaction with the administration of binding-estimate programs.

In fiscal year 1983, the Commission decided that motor and household goods carriers, like railroad companies, could limit their liability through the publication of "released rate" provisions which include deductible clauses, although only the Staggers Rail Act of 1980 had expressly provided for such clauses. During fiscal year 1984, the Commission's important released-rate decision was affirmed by the United States Court of Appeals for the Second Circuit, and further appeal was denied by the U.S. Supreme Court.⁵²

In the area of household goods operational rules, the Commission began a review of its regulations during the fiscal year in an attempt to ascertain whether any of its present rules are burdensome, unnecessary, inadequate to protect shippers, or otherwise inappropriate.⁵³

Comments were received from various interested parties, and their submissions are currently under review.

Early in the fiscal year, the Commission conducted an evaluation of performance standards which it had proposed for moving companies, and came to the conclusion that the adoption of such standards would be contrary to consumer interest, impractical to administer, and generally counterproductive.⁵⁴ The Commission specifically found that, as originally proposed, the performance-standard enforcement program would engender problems involving excessive delays, successive layers of appeal, evidentiary burdens in excess of those required in judicial proceedings, potential jeopardy to court actions, and compliance costs to carriers which inevitably would be passed on to consumers.

A staff study was concluded during the fiscal year which examined the handling of the household goods movements of individual shippers as evidenced by two representative groups of movers.⁵⁵ It was basically determined from study findings that both large and small carriers had a high success rate in meeting their service commitments, and in accepting responsibility for the control of the acts of their agents. Study results did suggest, however, that moving companies should increase their

⁵¹ Administrative Ruling No. 132, *Discount Rates and Binding Household Goods Estimates*, June 8, 1984.

⁵² *Shippers National Freight Claim Council, Inc. v. I.C.C.* 712 F.2d 740 (2d Cir. 1983), cert. denied, 5 U.S. 83-1496 (June 18, 1984).

⁵³ Ex Parte No. MC-19 (Sub-No. 36), *Practices of Motor Common Carriers of Household Goods (Revision of Operational Regulations)* (not printed), decided October 17, 1983.

⁵⁴ Ex Parte No. MC-19 (Sub-No. 36A), *Practices of Motor Common Carriers of Household Goods (Performance Standards)* (not printed), decided November 30, 1983.

⁵⁵ Special Compliance Survey — Household Goods Carriers, March 1984.

efforts to furnish shippers information concerning mover complaint and inquiry handling systems; to notify them of service delays; and to issue and maintain those shopping documents serving as the transportation agreement between the mover and the shipper.

All of the industry's largest moving companies currently offer binding estimates to shippers, and the most recent industry performance data reveal that the 14 largest movers (by shipment volume) transported 35 percent of the shipments of individuals on a binding-estimate basis during calendar year 1983.

There has been a marked decrease in the number of complaints lodged with the Commission over the past several years against household goods carriers. Although there was a slight increase in fiscal year 1984 complaint levels over those of fiscal year 1983, the number of complaints received was substantially less than the numbers recorded prior to enactment of the Household Goods Act of 1980.

The Independent Trucker

Fiscal year 1984 marked a period when several Commission decisions relevant to independent truckers were sustained by the courts. The United States Court of Appeals for the Fifth Circuit affirmed final rules revising ICC leasing rules that were issued and had become effective in fiscal year 1983.⁵⁶ These revisions require specific performance of lease provisions by trucking companies; specification that trip-lease payments to owner-operators be made by a permanent lease carrier;

limitations on the paperwork trucking firms may require as a payment condition; payment of fines by trucking companies for overweight and oversize trailers, under certain circumstances; provision for prorated refunds for returned base plates; specification of the amount of chargeback items, as well as a recitation of how the amount was computed; and provision to owner-operators of copies of documents necessary to determine the validity of the charges.

With respect to jurisdiction over the duration of lease transactions, the U.S. Court of Appeals for the Eleventh Circuit upheld new Commission rules which permit lease arrangement of less than 30 days' duration between regulated and private carriers.⁵⁷ The Court found that the rules allow truckers to avoid empty backhauls, and thus make better, more flexible, and more efficient use of their equipment. The rules became effective on March 14, 1984.

Of major importance during the past fiscal year was the denial by the Eleventh Circuit Court of all petitions for review of an earlier Commission decision permitting owner-operators and others not possessing ICC authority to lease both equipment and drivers directly to private carriers, as well as to shippers that do not operate private carriage equipment.⁵⁸ The Commission's decision had redefined the distinction between private carriage and for-hire operators, and consequently, the dis-

⁵⁶ *Lease and Interchange of Vehicles*, 132 M.C.C. 916 (1982).

⁵⁷ *Osborne Truck Line, Inc. et al v I.C.C.* _____ F.2d _____ (11th Cir. 1984).

⁵⁸ *Ryder Truck Lines, Inc. et al v United States and ICC*, 716 F.2d 1369 (11th Cir. 1984).



inction between legal and illegal lease arrangements. In a policy statement issued with its decision, the Commission had concluded that shippers using the services of independent truckers and other authorized persons must maintain control over transportation service and perform key management functions. However, owner-operators are not required to relinquish their independent status when entering lawful lease arrangements with private carriers. This decision became effective on April 6, 1984.

As defined by the Commission's decision, bona fide private carrier lease arrangements are those including the following six essential elements:

- (1) Lease periods of at least 30 days duration;
- (2) Exclusive commitment of leased equipment for shipper use during the lease period;
- (3) Acceptance and possession of exclusive dominion and control by a shipper over transportation service, and shipper assumption of responsibility for equipment operation during the lease period;
- (4) Shipper maintenance of public liability insurance, or acceptance of responsibility to the public for any personal injury or property damage caused during the performance of transportation service by the shipper with pertinent equipment during the lease period;
- (5) Shipper acceptance of responsibility for the cost of compliance with safety regulations and other requirements imposed by Federal, state, or local governments during the shipper's performance of transportation service; and
- (6) Shipper assumption of damage risk to cargo, subject to any right

of action the shipper may have against the equipment owner(s) for the latter's negligence during the lease period.

Other lease agreement features also may be examined by the Commission in deciding whether an arrangement falls within the definition of private carriage, but such factors are not to be considered as essential as those listed above.

The implementation of the Commission's relaxed private carrier leasing criteria afforded owner-operators and others an opportunity to compete in a completely new market. In recognition of the high level of interest expressed in the Commission's new policy during fiscal year 1984, the Commission's Small Business Assistance Office issued two leaflets on the subject of single-source leasing, a printed summary of the ICC's revised policy statement, and a printed list of the most commonly asked questions concerning private leasing arrangements. A training kit was also developed, and ICC representatives appeared before both shipper and independent trucker associations to explain the Commission's leasing regulations.

Current ICC leasing rules require that when a lessor transfers equipment to a lessee on a trip lease, the lessee must prepare and execute a receipt for the equipment at the point of transfer. However, in response to a petition received during the past fiscal year which sought authorization for the use of "master" lease agreements by authorized carriers, the Commission issued a notice of

proposed rulemaking which contemplated the modification of leasing regulations to (1) permit trucking companies engaged in trip leasing to use a "master" lease covering more than one unit of equipment, provided that the lease complies with all provisions of the ICC's leasing rules; (2) require that a copy of the master lease be carried in the equipment while it is in the lessee's possession; and, (3) permit required receipts to be transmitted by mail, telegraph, or other similar means of communication.⁵⁹ The potential benefits of this proposal would include the increased availability of trip leasing, reduced deadheading, and a generally more efficient and economical method of operation. Public comments had been received on the Commission's proposal at the close of fiscal year 1984, and it is anticipated that a final decision will soon be forthcoming.

A decision is also expected shortly on a Commission proposal to eliminate a current requirement that equipment be

leased for a minimum 30-day period when operated by its owner, and a related recordkeeping requirement for agricultural exemptions.⁶⁰ If the proposal is approved, trucking companies with inadequate supplies of equipment would enjoy greater operational flexibility through the ability to enter into trip-lease arrangements with owner-operators. Similarly, the ability of independent truckers to lease their services for less than 30-day periods would offer greater opportunities for individual diligence in securing short-term traffic when a lessee is unable to provide loads in a timely manner.

In addition to the attention given to owner-operator concerns through specific rulemaking proceedings, the Commission continued its efforts to furnish independent truckers with accurate, timely, and easy-to-understand information through the Commission's numerous, nationwide presentations before owner-operator groups, and its provision, upon request, of materials written on a variety of transportation topics. During fiscal year 1984, the Commission's regional offices and Small Business Assistance Office responded to thousands of individual inquiries received from independent truckers, and the Commission provided assistance to owner-operators in the resolution of complaints against regulated trucking companies and property brokers. The ICC took action on more than 3,000 independent truck complaints filed with it, and assisted owner-operators in the collection of close to \$950,000 in delayed settlements from carriers.

⁵⁹ Ex Parte No. MC-43 (Sub-No. 14): *Lease and Interchange Regulations (Master Leases)* (not printed); served February 21, 1984.

⁶⁰ Ex Parte No. MC-43 (Sub-No. 15): *Elimination of Thirty Day Leasing Requirement* (not printed); served August 29, 1983.

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BUS COMPANIES

General Financial Condition

Despite recent improvements in the Nation's economy and the increased flexibility brought about through passage of the Bus Regulatory Reform Act of 1982 (Bus Act), Class I intercity bus companies reported declines in revenues, earnings, and bus ridership during fiscal year 1984. This decline continued a trend which began in 1981. Greyhound Lines and the Trailways System continue to dominate the industry, accounting for approximately 60 percent and 20 percent, respectively, of the industry's total operating revenues. Smaller regional carriers share the remainder of the market.

Commission data for the ten largest bus companies for the 12 months ending June 30, 1984, and June 30, 1983, reveal that operating revenues fell 11.4 percent to \$963.8 million, while the number of passengers carried dropped 17.1 percent. Net income decreased 41.9 percent to \$10.6 million, and the rate of return on shareholders' equity fell to 2.18 percent from 3.81 percent.

Preliminary data for calendar year 1983 indicate that 45 Class I carriers reported a 9.7-percent decrease in operating revenues compared to calendar year 1982. Revenues from intercity regular-route service and from charter and special service declined 9.2 percent and 9.7 percent, respectively. Revenue passengers carried and revenue passenger miles operated in intercity service also declined substantially. Net carrier operating income fell from a \$29 million profit in 1982 to a \$6.6 million operating loss in 1983 and ordinary income declined by \$10 million to the 1983 calendar-year level of \$26 million. The bus industry's Class I carrier oper-

ating ratio, a measure of efficiency which states expenses as a percentage of revenues, increased from 98 percent in 1982 to 100.5 percent in 1983. The industry's ridership decline is generally attributed to greater automobile usage — owing to relatively stable gasoline prices and the improved economy — and substantially discounted airline fares. A labor strike at Greyhound Lines, Inc., during the final two months of calendar year 1983 also adversely affected the industry. However, the effects of the recession in the early 1980s and the continuing decline in bus ridership following the more recent economic recovery would have been more severe had not provisions for industry reform been included within the Bus Act.

Rates

In fiscal year 1983, the Commission adopted final standards to implement the provisions of Section 10 of the Bus Act, which set new criteria for the operation of bus industry rate bureaus.¹ This section generally applied guidelines established under the Motor Carrier Act for motor carriers of property to the passenger bus industry's rate bureau activity. Section 10 also added three new provisions, applicable solely to passenger bus companies, which define the scope of antitrust immunity.

During fiscal year 1984, the National Bus Traffic Association, Inc. (NBTA), currently the only bus industry rate bureau, proposed to reduce the length of time required for public notice of gen-

¹ Bus Rate Bureau Procedures, 367 I.C.C. 314 (1983).

eral fare increases sought by bus companies. Under the proposal, bus companies would be permitted to file schedules for general increases with notice periods of only 30 days' duration from the date of filing, as opposed to the 45-day period currently required. The Commission instituted a rulemaking proceeding to consider the NBTA proposal.²

Operating Rights

Entry — Industry reforms brought about by the Bus Act continued to have a significant impact on market entry during fiscal year 1984. Major bus companies continued to expand their route structures. The Commission approved the applications of Greyhound Lines for four major route extensions during the past fiscal year.³ The number of new charter service companies in operation dramatically increased because of the new ease of market entry, and the very low start-up and capital costs associated with the charter industry.

During the time between the Bus Act's November 1982 implementation through the end of fiscal year 1984, the Commission received 2,989 applications by new and existing bus firms for both regular route and charter authority. Of this total, 1,823 applications — more than half — were filed by new carriers, and 1,166 were filed by existing carriers. Applications for regular-route authority totaled 367, representing 12.3 percent of all applications for permanent passenger authority for the period of nearly two years.

Exit — In resolving one of the first cases filed under the exit pre-emption provisions of the Bus Act, the Commission dismissed a petition by Greyhound Lines.⁴ The dispute had arisen between Greyhound and the State of California. This proceeding originated over the nature of the information that a California state agency requires in requests for bus service discontinuance in advance of the scheduling of public hearings. In its review of pertinent issues in the dispute, the Commission found fault with both sides' conduct. The California agency was found to have refused consideration of information that Greyhound had submitted to it, and to have placed too great an emphasis on the quality of Greyhound's initial submission. For its part, Greyhound was found to have unreasonably delayed the submission of relevant information. Because the dispute arose shortly after the applicable law had become effective, the ICC refused to assert its pre-emptive jurisdiction, and instead permitted Greyhound to refile its exit request at the state level.

In its review of another intrastate proceeding, the Commission overturned an earlier decision in which it had denied permission for Virginia Stage Lines, Inc., to discontinue inter- and intrastate services on a route within a

² Ex Parte No. MC 82 (Sub No. 1), *Proceedings in Motor Carrier Revenue Proceedings—Intercity Bus Industry* (not printed), served May 21, 1984.

³ No. MC 1515 (Sub No. 324) et al., *Greyhound Lines, Inc. Extension—One Hundred Fourteen Routes* (not printed), served February 2, 1984.

⁴ No. MC 1515 (Sub No. 303), *Rejection of Greyhound Lines, Inc., for Review of a Decision of the California Public Utilities Commission Pursuant to 49 U.S.C. 10905* (not printed), served May 16, 1984.



single state.⁵ The Commission had initially denied the exit request because the bus company had failed to disclose necessary revenue and cost data for the ICC's use in assessing whether continued operations would not constitute an unreasonable burden on interstate commerce. On appeal, the Commission accepted the Virginia State Lines recalculation of its revenue and variable cost data, and determined that the service discontinuation would be in the public interest. The Commission's decision has now been affirmed on appeal.⁶

Service

During the months of January and February 1984, the Commission conducted a survey of state regulatory bodies having jurisdiction over intrastate passenger bus operations. The purpose of the study was to provide the ICC with information concerning bus service operations within the individual states since implementation of the Bus Act. Responses were received from 45 states.

To varying degrees, practically all of the representatives of the state agencies surveyed expressed familiarity with the provisions of the Bus Act, and 36 of the respondents indicated that changes in passenger service had been observed within their respective states. Of those observing change, respondents from 29 states reported a

decrease in service and six observed an increase in bus operations. Of the 29 states reporting service reductions, six reported that replacement service by other carriers was generally rare, and that such service was offered in fewer than 20 percent of the instances where services had been reduced or eliminated. On a positive note, 10 states reported that new forms of innovative passenger operations, including the use of smaller than usual vehicles or expanded service to and from airports, had materialized within the past two years.

Bus passenger complaints lodged with the Commission rose to an average of 25.6 per month in fiscal year 1984, up from an average of 16 complaints per month during fiscal year 1983. This new figure approximates the complaint level prevalent before passage of the Bus Act. These complaints largely reflected ongoing service reductions and rate and fare changes instituted by the major bus companies. Of the total number of complaints received, 200 were service complaints involving such matters as delays in the provision of service, service discontinuance, equipment shortages, and instances of unauthorized transportation. Sixty-three complaints involved rate and charge grievances over refunds, overcharges, and misapplications of tariff provisions. There were also 44 baggage and express-handling complaints.

The Commission also implemented a concentrated program of passenger bus inspections at tourist centers, amusement parks, and other recreational facilities during the past fiscal year. The program's purpose was generally to identify passenger bus companies which were operating without proper ICC authority, but it was also designed to ascertain whether bus

⁵ See *ICC Order* (Sub No. 14), *Rejection of Virginia State Lines, Inc. Exit Request*, 1984 Dec. 16, in the West Virginia Public Service Commission, *Proceedings* 49, U.S.C. 10905 (not printed), issued March 21, 1984.
⁶ See *20th Anniversary*, p. 174-175, 20-176 (Jan. 1984).

companies possessed the minimum levels of insurance coverage required by law. In those instances where non-compliance was discovered, appropriate measures were taken to prevent further operations without proof of adequate insurance protection for the public.

Studies and Reports — The Commission continued its efforts during fiscal year 1984 to assist local governments, small bus companies, and the general public in adjusting to changes brought about by the Bus Act. In addition to publications prepared and distributed by the Commission's Small Business Assistance Office, which explain the Act's provisions and provide guidance to applicants in requests for new or additional operating authority, the Commission completed some studies, and undertook another, of interest to states and communities alike.

The Commission's Office of the Special Counsel prepared two study reports, entitled *Public Participation In Interstate Commerce Commission Cases Under the Bus Regulatory Reform Act of 1982* and *Variable Cost and Revenue Issues in Interstate Rate and Exit Cases Under the Bus Regulatory Reform Act of 1982*. Both reports provide guidance for participation in Commission proceedings instituted at the request of bus companies which have been unsuccessful in seeking service discontinuances and rate increases from state regulators.

In January 1984, the Commission's Office of Transportation Analysis issued a study entitled *The Inter City Bus Industry*, which focused on the market structure, conduct, and performance of the intercity bus industry, and how each of these three aspects of the industry had been affected by the Bus Act. The intercity study updated the findings of an earlier Commission study originally released in 1978.

The Commission is continuing a study undertaken with the U.S. Department of Transportation, as required by Section 26 of the Bus Act, to explore various topics relative to intercity bus terminals and stations, including an analysis of the implications of public versus private terminal ownership relative to the present level of competition between bus companies.

Information gathered thus far reveals that 25 percent of all intercity bus companies use bus terminals or stations, and that terminals represent only a small proportion of the total annual investment and operating expenses of such firms as Greyhound and Trailways. The study's findings tentatively indicate that the current pattern of bus facility ownership and control does not present insurmountable barriers to market entry for intercity bus industry firms.

FREIGHT FORWARDERS

New authority for entrance into the freight-forwarding industry continued to be granted by the Interstate Commerce Commission during fiscal year 1984, and certificates were issued based on such factors as the desirability for increased competition in the market, the potential for new or improved service offerings, and the public interest.

Commission grants of freight forwarder authority during the past fiscal year consisted not only of broad grants of general commodity authority (with exceptions) between all points in the United States,¹ but also of grants with specific limitations.²

¹ No. FF-731, *Commercial Diversified Service, Inc.*; Freight Forwarder Application (not printed); decision of the Review Board, served February 10, 1984; No. FF-713, *Archway Freight Forwarders, Inc.*; Freight Forwarder Application (not printed); decision of the Review Board, served November 7, 1984; No. FF-714, *Executive International, Inc.*; Freight Forwarder Application (not printed); decision of the Review Board, served November 23, 1983; and No. FF-711 (Sub-No. 1), *Devco Distribution Services, Inc.*; Freight Forwarder Application (not printed); decision of the Review Board, served December 8, 1983.

² No. FF-707, *Univisair Air Freight, Inc.*; Freight Forwarder Application (not printed); decision of Appellate Division 1, decided January 5, 1984; and No. FF-737, *Desert International Forwarders, Inc.*; Freight Forwarder Application (not printed); decision of the Review Board, served March 5, 1984.



WATER CARRIERS

The great bulk of water carrier traffic is exempt from regulation under statutory exclusions applicable to water carrier service that is not competitive with other regulated carriage because of the inherent nature of the commodities to be transported, particular requirements for special equipment, or certain bulk shipments.

Nevertheless, the Commission increased its attention toward the ownership of water carriers by other transportation modes, as in the case of

recent purchases of water carrier companies by motor¹ or rail interests. The recent purchase of American Commercial Lines by the CSX Corporation (see "Railroads, page 30) is expected to have an impact on the financial relationships existing between and among water carriers and other surface transportation modes.

¹ See "Wetland Ties" Transportation Company, not certified decision of the Review Board, January 27, 1984, vacating a prior Review Board decision of August 27, 1983.

INTERMODAL TRANSPORTATION

During fiscal year 1984, the Commission continued to ease past policies that had restricted intermodal ownership through the elimination of the so-called "special circumstances" doctrine applicable to railroad acquisitions of motor carriers.¹

The special circumstances doctrine had created a presumption against a rail-motor acquisition wherever a trucking company's service was more extensive than supplemental or auxiliary to rail service, unless special, public-interest circumstances were demonstrated in support of the acquisition. That presumption has now been replaced by a balanced, case-by-case approach in the application of a special statutory requirement.² Recently, the same presumption in applications for motor carrier authority by railroads and their affiliates has been removed.³

The most significant rail-barge merger in recent years took place with the Commission's approval of the acquisition of American Commercial Lines, Inc. (ACBL), and its water-carrier subsidiary, the American Commercial Barge Line Company, by the CSX Corporation (CSX), owner of the Chessie System Railroads and the Seaboard System Railroad (See "Railroads," p. 30).⁴ In reaching its decision in this, the first proceeding under the Panama Canal Act⁵ to come to its attention in many years,

the Commission concluded that the transaction would not reduce competition on water routes, primarily because it was determined that the barge industry was highly competitive and relatively easy to enter, and because it was characterized as having numerous sources of traffic available to barges and many transportation alternatives available to shippers.

As a result of its decision, the CSX-ACBL merger has created the Nation's first full-transportation company to provide "one-stop" transportation "shopping" through its coordinated, multi-mode transportation service offerings. However, because of the potential for lessening of intermodal competition, the Commission conditionally approved the transaction to provide for the monitoring of the merger's impact for a period of at least five years from the date of its decision.

As fiscal year 1984 drew to a close, the Commission was considering another significant intermodal consolidation proceeding involving the Norfolk Southern Corporation (NS), owner of the Southern Railway Company and the Norfolk and Western Railway Company, and its proposal to acquire North American Van Lines, Inc. (NAVL).⁶ The NS-NAVL application was filed with the ICC on August 16, 1984, was accepted for consideration on September 14, 1984, and must be finally decided no later than June 11, 1985. This proceeding is the first principal case requiring the Commission's consideration of a proposed consolidation of a major motor carrier and a major rail carrier since the

¹ Ex Parte No. 438: Acquisition of Motor Carriers by Railroads, _____ I.C.C. 2d _____ (1984).

² 49 U.S.C. 11344(c).

³ Motor Carrier Operating Authority—Railroads, 132 M.C.C. 978 (1982), affirmed on appeal sub nom. American Trucking Associations, Inc. v. I.C.C., (5th Cir. 1984).

⁴ Finance Docket No. 30300: CSX Corporation—Control—American Commercial Lines, Inc., _____ I.C.C. 2d _____ (1984).

⁵ 49 U.S.C. 11321.

⁶ Finance Docket No. 30500: Norfolk Southern Corporation—Control—North American Van Lines, Inc.

Commission modified its policy toward such consolidations.

In an open conference held September 20, 1984, the Commission voted to exempt highway trailer-on-flatcar/container-on-flatcar (TOFC/COFC) service by motor carriers where that service constitutes part of a continuous intermodal movement.⁷ A final decision in this TOFC/COFC proceeding will be issued early in fiscal year 1985, and the exemption will place independent motor carriers on an equal status with rail-controlled motor carriers. The Commission has additionally undertaken, and will soon complete, a monitoring study of TOFC/COFC service which will

evaluate traffic trends and service quality over the past several years.

The Commission also used its statutory exemption procedures during the past fiscal year to permit the purchase of one trucking company's operating authority by another in order to aid the preservation of the motor-carrier portion of piggyback service.⁸ It also continued to promote competitive and efficient carrier services for intermodal transportation through the authorization of motor carrier service assistance in the handling of import-export traffic moving by water.⁹

⁷ No. MC F 15811. Dairy Linking Service, Inc. - Purchase Exemption - Sunshine Express of Wilson, Inc. (not printed) served September 11, 1984.

⁸ No. MC 148105 (Sub-No. 7). Overland Express, Inc. Extension - Texvie Mfg. Products, Etc. (not printed) served December 22, 1983, and No. MC 123807 (Sub-No. 8). Reynolds Rotorhead, Extension - General Commission National (not printed) served September 18, 1984.

⁹ Ex Parte No. 230 (Sub-No. 6). Improvement of TOFC/COFC Regulation.

TARIFFS

Common carriers filed more than 1.2 million tariffs with the Interstate Commerce Commission during fiscal year 1984, approximately the same number filed in fiscal year 1983.

Rail contract filings for fiscal year 1984 totaled more than 13,000. This figure signifies shipper and carrier endorsement of the Commission's contract program as an alternative to tariff pricing. No comparable figures are available for motor contract activities, since the Commission has discontinued the requirement for the filing of contracts or supporting rate contracts by motor carriers.¹

The ICC's elimination of the filing requirements for contract motor carriers led to a request by common carriers for the means to improve their ability to match the increased pricing flexibility of contract carriers. In response to this request, the Commission reduced the "notice" period to the public that must precede the effective date of tariff rates and charges which trucking companies and forwarders seek to change.² New or reduced tariff rates or charges may now be established after one day's notice, and increased rates or charges are permitted to take effect after seven "working days" notice. The longer notice period for increases is designed to give the public the opportunity to protest increases which they believe are unwarranted.

The Commission drastically modified regulations concerning the format and

contents of tariffs filed with it.³ The Commission condensed four separate sets of rules into one, thus establishing basic guidelines rather than firm requirements. The new regulations establish the simple requirement that filed tariffs meet the statutory obligation that each carrier openly discloses the prices it charges for the services it provides.

The new tariff regulations will also substantially reduce the need for carriers to submit "special permission" applications for relief from tariff regulations, since the new regulations do not include the former rules which required the majority of special-permission applications. In fiscal year 1984, over 9,000 special-permission applications were received, a total that represented a decline of approximately 35 percent from the 14,000 applications received in fiscal year 1983. The Commission expects a further decline as a result of recently adopted tariff regulations, and anticipates the realization of processing cost savings to the motor carrier industry and to itself.

An example of the Commission's efforts to foster simplified tariffs is its recent decision permitting common carriers to establish rates for specifically named shippers.⁴

Informal Rate Cases

The Commission's Bureau of Traffic employed its informal procedures to settle 6,347 cases concerning disputes over rate and tariff matters during the past fiscal year. While the Commission

¹ Exemption of Motor Contract Carriers From Tariff Filing Requirements, 133 M.C.C. 150 (1983).

² Ex Parte No. MC 170, Short Notice Effectiveness For Independently Filed Motor Carrier and Freight Forwarder Rates (not printed), served May 23, 1984.

³ No. 37321, Revision of Tariff Regulations: All Carriers (not printed), served October 1, 1984.

⁴ Rates For A Named Shipper Or Receiver, 367 I.C.C. 959 (1984).

does not record total dollar amounts involved in the rate and tariff controversies which it attempts to resolve. Letters written to the Commission in appreciation of its dispute-resolution efforts reveal that \$132,459 had been recovered in 281 individual cases.

The Commission's special-docket procedure permits rail and water carriers to seek authority for the refund or waiver of the collection of charges. During fiscal year 1984, a total of 816 special-docket applications were processed that authorized total reparations and waivers amounting to \$11,207,182. The largest single adjustment made last fiscal year was an undercharge waiver of \$3,230,500 on 1,104 carload shipments of bulk corn. Most of these cases arise not because of disagreements between carriers and shippers, but rather because of regulation prohibiting transportation charges less than those in the published tariff, regardless of the understanding or agreement of all parties. In short, these cases in most instances merely legalize the pricing agreements between shippers and carriers.

Through the Commission's informal-complaint procedures, shippers by rail or water may prevent the expiration of the statute of limitations for overcharges or unreasonable charges by writing to the Commission and by fully explaining the nature of their complaints. If the carrier in question agrees that a particular movement involved overcharges or

unreasonable charges to a shipper, refunds or waivers may be made accordingly and without the need for the Commission's institution of time-consuming and costly formal procedures. The Commission processed 75 such applications on the informal-complaint docket during fiscal year 1984.

Household goods carriers and freight forwarders are required to seek authority from the Commission prior to the publication of any "released rates" based on a limitation of the carriers' liabilities for shippers' properties. During the past fiscal year, the Commission's Released Rates Board acted on four applications for such authority.

Suspension Board

New, increased, or reduced rates and charges for the interstate service provided by the nation's rail, motor, freight forwarder, and domestic water carrier industries are filed with the Commission and the public.⁵ Upon the request of interested parties opposing the proposed tariff changes, the proposals are considered for possible investigation and suspension by the Commission's Suspension Board, or by the entire Commission. Decisions of the Board are subject to reconsideration by a division of the Commission.

During fiscal year 1984, approximately 1,250,000 tariffs were filed with the Commission and 87 of these were protested (.007 percent). Of these proposals, two were suspended, 59 were permitted to become effective, two were allowed to go into effect but were investi-

⁵ The Staggers Rail Act of 1980 (P.L. 96-448) amended 49 U.S.C. 51762(c)(3) to permit rail carriers to file new or increased rates on generally not less than 30 days notice and rate reductions on not less than 30 days notice.

gated, and 24 were either cancelled by the proposing company, had their protests withdrawn, or were rejected by the Commission.

There were six unprotested rate proposals considered by the Board on its own initiative. All were permitted to become effective.

Among the proposals considered were 25 general increases in, or restructurings of, trucking rates and charges filed by regional motor carrier bureaus.⁶

Under the provisions of 49 U.S.C. 10726, the Board formerly considered applications for authority to depart from those rules which prohibit rail and water companies from charging more for transportation for a shorter distance than for a longer distance over the same route, and under the same transporta-

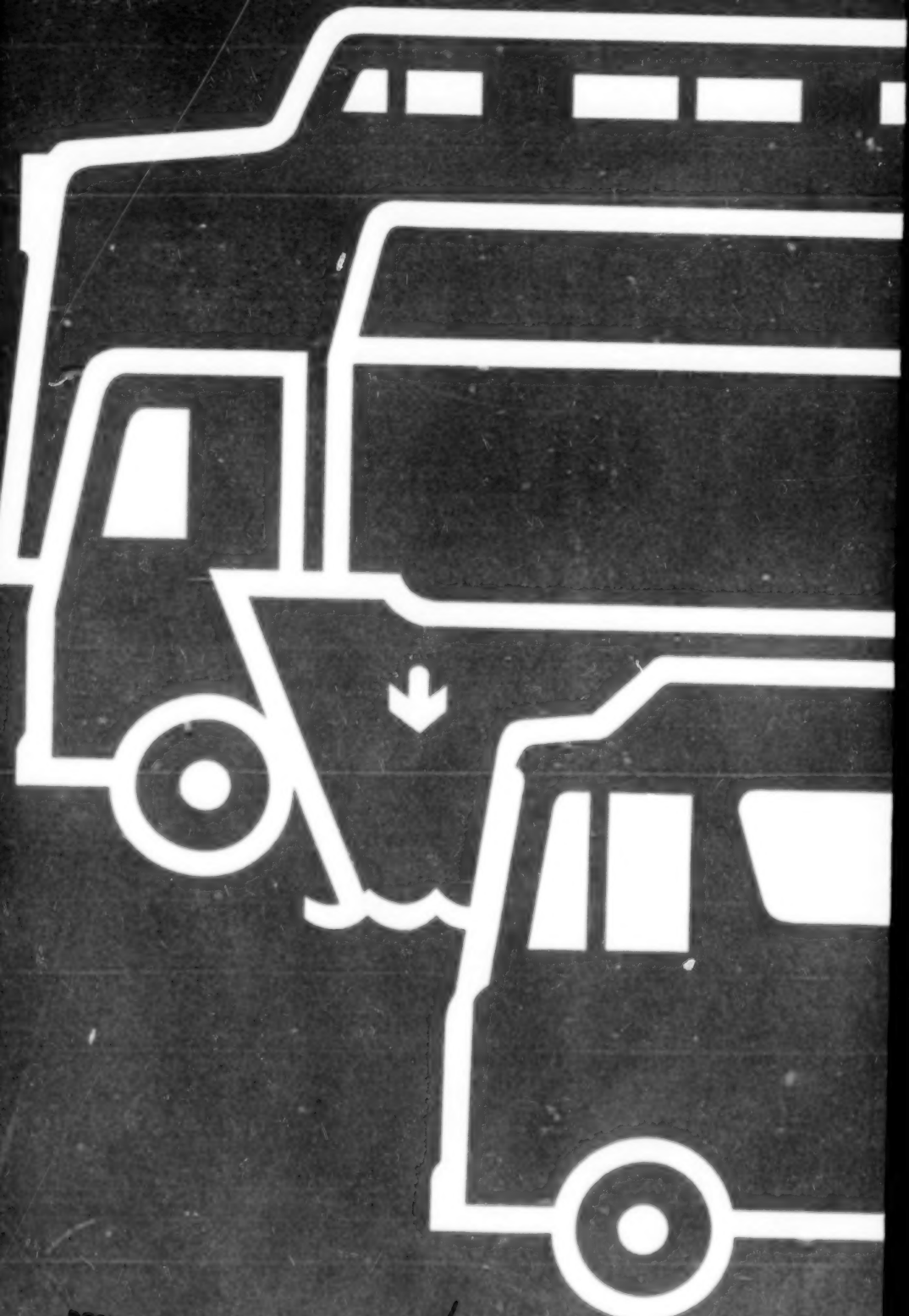
tion conditions. As a result of the Commission's decision in a recent railroad exemption proceeding,⁷ rail rates and charges were exempted from the need for prior Commission approval whenever departures are made from the restrictions of 49 U.S.C. 10726.

Of the 13,661 rail contracts filed with the Commission, the Suspension Board also handled nine petitions and/or complaints requesting that the Commission issue discovery orders concerning the essential terms of rail contracts authorized by 49 U.S.C. Section 10713, or that the Commission begin a proceeding to review the lawfulness of such contracts, or both.

⁶ Central & Southern, Central States, Eastern Central, Mid-South, Midwest, New England, Pacific, Great Rocky Mountain, Southern Motor, and Niagara Frontier.

⁷ Re General Exemption Authority—Long and Short-Haul Transportation, 360 U.S. 274 (1963).

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ENFORCEMENT

Throughout fiscal year 1984, the Commission's enforcement program sought a variety of legal remedies in its effort to ensure compliance with Federal economic regulation. During the past year, over \$1.4 million in fines were assessed, scores of injunctions and consent agreements were obtained against a number of carriers for various violations, and several individuals were incarcerated for regulatory infractions as a result of Commission investigations.

The Commission's fiscal year 1984 enforcement activities were undertaken within the following four major categories, each of which includes a number of specific case types:

- Service and pricing practices — involving antitrust violations, kickbacks, illegal concessions and service failures
- Insurance safety fitness — involving insurance coverage and safety considerations
- Specific Congressional directives — concerning owner-operators and weight bumping and illegal jumping practices
- Public interest — ethics, fitness factors other than safety, household goods transportation, misappropriation of carrier assets, Commission orders and decisions, overcharges, duplicate payments and claims practices, records maintenance, unauthorized transportation, and directed service.

During fiscal year 1984, the Commission continued to increase its use of consent agreements as a means of successfully concluding enforcement actions. Executed by respondents and the Commission, these agreements call for compliance with the Interstate Com-

merce Act and its regulations, and are frequently used in lieu of formal enforcement action in order to achieve compliance.

Highlights of the Commission's enforcement efforts during the past fiscal year are described below.

Service and Pricing Practices

On January 9, 1984, two individuals were fined \$10,000 each for their participation in a kickback scheme. The scheme involved cash payments made to a shipper's traffic manager by trucking companies in return for the shipper's traffic. The convictions were affirmed on appeal.¹

On July 3, 1984, Family Products, Inc. paid a civil penalty of \$7,000 to settle claims asserted by the Commission. Family Products, a plastics manufacturer, was found to have misdescribed commodities which it had shipped over the Boston and Maine Railroad in order to obtain a lower rate than that provided in the applicable tariff.

In a case resulting from a joint investigation with other Federal agencies, a carrier official pleaded guilty to mail-fraud charges involving the payment of kickbacks to an employee of a shipper during a two-year period in order to secure the business of the official's company.²

Insurance Safety Fitness

Regulated motor carriers are required by law to maintain minimum levels of

¹ U.S. v. William M. Ruggie and Edward M. Spadaro, Civ. No. 83-1001, U.S. District Court, District of New York, 1984, 1984 WL 1001, 1984-1 CB 1001.

² U.S. v. [redacted], Civ. No. 83-1001, U.S. District Court, District of New York, 1984, 1984 WL 1001, 1984-1 CB 1001.

insurance. In fiscal year 1984, the Commission attempted to resolve lack of insurance problems through administrative handling. However, more than 50 enforcement actions were brought. Representative examples are as follows:

A permanent injunction was entered against a bus company. It prohibited the interstate transportation of passengers without evidence of appropriate bodily injury and property damage insurance coverage on file with the Commission.³

Flumer Brothers Transfer & Supply, Inc., a property broker, entered into a consent agreement with the Commission under which it agreed to refrain from the brokerage of interstate transportation without having a surety bond on file with the Commission.

Specific Congressional Directives

In one proceeding, a motor carrier was ordered to pay \$225,448 in settlements to owner-operator lessors. A permanent injunction was also entered against the carrier enjoining it from failing to pay lessors in a timely manner in the future in accordance with ICC regulations.⁴ In another case, a permanent injunction was obtained against a trucking company which enjoined it from violating leasing regulations designed to protect owner-operators.⁵

The Commission concluded two cases under the new "lumper" statute, which prohibits the practice of requiring drivers to hire a person or "lumper" to unload or load a vehicle.⁶ In one of the

cases, two affiliated firms — Tourtellot and Co., Inc., of Providence, Rhode Island, and Shamrock Distributors, Inc., of East Hartford, Connecticut — paid a civil penalty of \$5,000. The companies required drivers to pay for assistance in unloading, even though the drivers were willing to unload by themselves. In the other case, a permanent injunction was entered against a consignee prohibiting future violations of the "lumper" statute relative to its unloading practices.⁷

The Commission obtained civil penalties against W. J. Casey Trucking & Rigging Co., Inc., of Union, New Jersey, for violations of the owner-operator, truth-in-leasing regulations. This carrier's leases with owner-operators neither specifically stated the basis for compensation, nor the responsibilities of the parties, and it did not provide the basis for expense assessments.

An injunction was obtained against two household goods carriers who were improperly utilizing the binding-estimate procedures permitted by the Household Goods Transportation Act of 1980. The moving companies were enjoined from the future failure to honor initial binding estimates given to shippers. In addition, a court order required the moving companies to review their records and to make restitution to shippers of past overcharges.⁸

³ *ICC v. Johnson Bus Service*, Civ. No. 84-56 Civ. R. (E. D. N.C., August 26, 1984).

⁴ *ICC v. Reed Lines, Inc.*, Civ. No. 84-180 Civ. R. (E. D. N.D. F., June 8, 1984).

⁵ *ICC v. C.R.W. Transport Service, Inc.*, Civ. No. 83-5068 (S.D. N.Y., September 11, 1984).

⁶ 49 U.S.C. 11109.

⁷ *ICC v. A. Benkowski Co.*, Civ. No. 83-C-9632 (N.D. N.Y., February 24, 1984).

⁸ *ICC v. Fushing Van & Storage Co., Inc., et al.*, No. CV 84-2766 (E. D. N.Y., August 30, 1984).



Public Interest

The Commission revoked the operating authority of AAACon Auto Transport, Inc., a driveway service, for engaging in practices that were found to be unjust, unreasonable, and in violation of a previously issued cease-and-desist order AAACon — a firm which arranged for its drivers to deliver shippers' automobiles to destinations by driving the autos there for the shippers — had engaged in various illegal practices, including the slow processing of damage claims, or failure to process them, and other practices determined to be harmful to consumers who used AAACon to deliver their automobiles. The Commission found that, even after entry of the cease-and-desist order, AAACon did not halt the prohibited activities but, instead, "masked and continued them."⁹

Elite Moving and Storage, Inc., of Owings Mills, Maryland, a household goods carrier, entered into a consent agreement with the Commission under which it agreed to modifications to its binding-estimate practices in order to ensure more protection to its customers.

A permanent injunction was obtained against a moving company which required it to properly handle loss and damage and overcharge claims, and to resolve all outstanding 1981-84 claims within a 180-day period.¹⁰

In another case, a United States District Court ordered a moving company to permit Commission personnel to inspect its records. The mover had initially refused access to its records when the ICC had begun investigating allegations of unauthorized transportation of household goods.¹¹

In its continuing effort to monitor unauthorized transportation by trucking companies domiciled in contiguous foreign countries which do not provide reciprocal access to their territory for American carriers, the Commission brought several enforcement actions. For example, two affiliated carriers — Oscar Ramos, doing business as Auto Express Mexicano, and Hamilton O'Connor Transportation, Inc. — agreed to halt the transportation of regulated freight from the Republic of Mexico to the Los Angeles, California, area.

During fiscal year 1984, three major trucking companies — Consolidated Freightways, Garrett Freightlines, Inc., and Transcon Lines — entered into consent agreements concerning alleged overcharges to consumers in the Puget Sound area of Washington state. The agreements provided for company notification of customers who may have been overcharged, and for company assistance to customers in obtaining refunds. The three companies also agreed to comply with ICC regulations concerning overcharge identification and repayment.

⁹ See *ICC v. AAACon Auto Transport, Inc.*, Interstate Commerce Commission, Washington, D.C., August 17, 1984.

¹⁰ See *ICC v. Freightways, Inc.*, Interstate Commerce Commission, Washington, D.C., May 1984, 2087-9.

¹¹ See *ICC v. Hamilton O'Connor*, 1984.

¹² See *ICC v. Hamilton O'Connor Transportation, Inc.*, Interstate Commerce Commission, 1984.

COURT ACTIONS

The Commission's litigation during fiscal year 1984 continued to focus on the interpretation and implementation of various provisions of the Staggers Rail Act of 1980, the Motor Carrier Act of 1980, and the Bus Regulatory Reform Act of 1982. These landmark amendments to the Interstate Commerce Act, along with subsequent Commission adjudications and rulemakings, gave rise to court decisions that have significant impact on the Nation's surface transportation industry (including railroads, motor carriers of property and passengers, and water carriers) and the public it serves.

During the past fiscal year, the ICC's Office of the General Counsel handled 745 cases in Federal courts. Of these, 457 were pending at the beginning of the fiscal year, and 288 additional cases were instituted during the year. As of September 30, 1984, the courts had concluded 226 cases, and 519 were in various stages of litigation. Of the cases concluded, 11 were done so by the Supreme Court, 196 by the Federal courts of appeals, and 19 by the Federal district courts.

On June 5, 1984, the United States Supreme Court issued an important decision upholding the Commission's authority to reject effective tariffs formulated in substantial violation of motor carrier rate bureau agreements.¹ As a result of the Supreme Court's action, motor carriers may be liable for overcharges if the carriers do not conform to their approved agreements. The Court reversed the United States Court of

Appeals for the Eleventh Circuit² which had struck down the ICC rule that allowed effective tariffs to be rejected in such circumstances.³

The Eleventh Circuit had held that the Commission may only prescribe a proper rate for the future because the creation of retroactive overcharge liability would undermine "the uniformity and reliability interests that the system of tariff filing was meant to foster."

The Commission petitioned the Supreme Court for a writ of certiorari because the Eleventh Circuit's holding that the Commission can never reject effective tariffs squarely conflicted with *Aberdeen & Rockfish Railroad Company v. United States*,⁴ in which the Fifth Circuit affirmed Commission rules that provide for rejection of effective tariffs containing incorrect symbols.⁵

The Supreme Court held that Section 10762(e) of Title 49, United States Code, which authorizes the Commission to reject a motor carrier tariff, if it violates the statutory requirements for publishing and filing tariffs, does not extend to effective tariffs. This did not prevent the Court from affirming the Commission's rejection power, however, because the Court also concluded that the rejection of effective tariffs for proven violations of a rate bureau agreement is a "justifiable adjunct" to the Commission's express rejection authority to ensure compliance with rate bureau agreements.

¹ *American Trucking Associations v. ICC*, 688 F.2d 1337 (11th Cir. 1982).

² Ex Parte No. 297 (Sub No. 5), *Motor Carrier Rate Bureau Implementation*, PI, 96-296, 364 I.C.C. 921 (1982).

³ 682 F.2d 1092 (5th Cir. 1982).

⁴ Ex Parte No. 370, *Tariff Improvement*.

⁵ *Interstate Commerce Commission v. American Trucking Associations*, _____ U.S. _____, 104 S. Ct. 2458 (1984).

In other motor carrier litigation, the courts of appeals affirmed several significant rulemakings. The U.S. Court of Appeals for the Fifth Circuit affirmed Commission rules governing motor property carrier applications for new authority.⁶ To implement the Motor Carrier Act, the Commission had adopted interim rules governing the form of motor carrier licensing applications and protests, and the schedule for handling such cases. The Commission implemented the interim rules without having first provided a comment period. Subsequently, the Commission adopted final rules based on comments of interested parties and the experience gained in the use of the interim rules.⁷

The Commission's rules withstood both procedural and substantive challenges. The Fifth Circuit found that the Commission had not erred in implementing the interim rules without notice and comment, and it agreed that the "current backlog and future floodtide of cases" required that new rules be in place upon enactment of the Motor Carrier Act in order to make the Act effective. Substantively, the court also found that the final rules, including the prohibition of restrictive amendments and the deletion of financial fitness and operational feasibility requirements, were valid under the Act.

In a major decision involving grants of motor carrier licenses to railroads, the Fifth Circuit also affirmed the Commission's policy statement abolishing the requirements that rail-affiliated motor carriers demonstrate "special circumstances" in order to receive unrestricted

motor carrier operating authority.⁸

The Commission had determined by rulemaking that the so-called "special circumstances" doctrine was no longer viable in light of the recent amendments to the Interstate Commerce Act.⁹ The court agreed that the revised Act did not require special, restrictive-treatment licensing proceedings, and that Congress did not intend to "reenact" the "special circumstances" doctrine in the Motor Carrier Act.

The U.S. Court of Appeals for the District of Columbia Circuit affirmed the Commission's decision in a rulemaking involving the adoption of a new methodology for the allocation of the terminal or "platform" costs of handling motor carrier freight. The case involved substantive challenges to the new methodology, as well as challenges to the participation in the rulemaking of Commission personnel who had previously been involved in the development of a platform study.¹⁰

This latter decision was a major procedural victory for the Commission because the reviewing court declared that the ICC was free to choose among various procedural options, including the use of rulemaking rather than adjudication. The court also found that neither Federal statutes nor the due-process clause imposes a general separation of functions requirement on informal rulemaking by the Commission.

⁶ *American Transfer and Storage Co. v. ICC*, 719 F.2d 1283 (5th Cir. 1983).

⁷ *Rules Governing Applications for Operating Authority*, 664 I.C.C. 508 (1980).

⁸ *American Trucking Associations, Inc. v. ICC*, 722 F.2d 1243 (5th Cir. 1984), per curiam denied cert., 115 L.Ed.2d 1188 (1985).

⁹ *Applications for Motor Carrier Operating Authority by Railroads and Rail Affiliates*, 132 M.C.C. 979 (1982).

¹⁰ *National Grain Shippers' Nat'l Conference v. ICC*, 725 F.2d 1447 (D.C. Cir. 1984).

Fiscal year 1984 also saw a number of court decisions on individual motor carrier licensing proceedings with a focus on issues involving the transportation of commodities in bulk form. The Commission's decisions were largely upheld where there was an express showing of need (as well as fitness) for such transportation of commodities in bulk (as opposed to non-bulk form). For example, the U.S. Court of Appeals for the District of Columbia Circuit affirmed a Commission decision granting nationwide, general commodities authority to an applicant where only one supporting shipper stated an express need for transportation of commodities in bulk form.¹¹ The court affirmed the Commission's "power to confer nationwide general commodities authority on the basis of a single shipper's evidence, when that authority is sought in conjunction with the nationwide non-bulk general commodities authority supported by a multi-shipper, and multi-commodity representative sampling." The court drew an analogy between the Commission's action and the Congressional directive that the Commission "reasonably broaden the categories of property authorized by a carrier's certificate," by reasoning that the "restriction removal" provision implies that new certificates should be broadened beyond the Commission's prior practice. The broad grant of authority won the court's approval because of the Commission's emphasis on the "back haul efficiencies of nationwide point-to-point authority.

In contrast, where applicants did not present any express evidence of need, the Commission's decisions were struck down notwithstanding its policy against the subdivision of transportation along commodities lines. To illustrate, the U.S. Court of Appeals for the Fifth Circuit held in one case that an applicant must specifically demonstrate by appropriate (but not necessarily extensive) record evidence that there is a public need for bulk carriage and that the applicant is fit, willing, and able to perform the bulk service.¹² In that same case, the Commission had relied upon its policy of disallowing bulk restrictions on grants of specified commodities, and of compelling applicants either to accept the authority without a bulk restriction or to risk denial of their applications. In its decision, the court reiterated its belief — initially stated in relation to grants of general commodities — that bulk transportation normally is a distinct type of service. The court held that separate showings of public need as well as fitness, willingness, and ability for bulk carriage of specified commodities are required, although the quantum of proof required to make those showings need not be extensive.

The U.S. Courts of Appeals for the Third and Eighth Circuits also struck down Commission grants of motor carrier authority involving specified and

¹¹ *Port Norris Express, Inc. v. ICC*, 728 F.2d 843 (D.C. Cir. 1984).

¹² *Sherry-Tank Lines, Inc. v. ICC*, 753 F.2d 1094 (5th Cir. 1984).



general commodities on similar grounds.¹³ However, in the Third Circuit opinion, the majority stated that "the Commission could adopt rules requiring the grant of unrestricted certificates for the transport of some specific commodities." The concurring opinion suggested that the Commission might justify its position with evidence by instituting a rulemaking proceeding, and the Commission has in fact instituted such a proceeding on the bulk issues.¹⁴

A number of significant cases were decided under the new Bus Act involving the scope of bus operations, rates, and exit petitions. One of these cases involved the Commission's interpretation of the restriction-removal provision of the Act. According to Section 7 of the Bus Act, the Commission promulgated rules that allow passenger carriers to remove intermediate point restrictions from all existing routes, including super-highway and deviation routes.¹⁵ In February 1984, the U.S. Court of Appeals for the District of Columbia Circuit affirmed both the new rules and an application of the rules to remove particular restrictions. The court agreed with the Commission's interpretation of Section 7, but held that only letter notices — not new certificates — may be issued if restrictions are removed from deviation routes.¹⁶

In September 1984, the U.S. Court of Appeals for the Second Circuit addressed in a case a provision of the Bus Act which pre-empts state regulation of intrastate bus fares.¹⁷ New York State denied an application for a 40-percent increase in intrastate bus rates. Acting under 49 U.S.C. 11501(e)(2)(A)(1), which establishes a rebuttable presumption that an intrastate rate lower than the comparable interstate fare imposes an unreasonable burden on interstate commerce, the Commission reversed the denial of the application. The court affirmed the Commission's decision by finding, among other things, that *North Carolina v. United States*¹⁸ does not require that Commission decisions pre-empting state regulatory authority must meet a "high standard of certainty." Instead, the court found that the narrow "arbitrary and capricious" test of 5 U.S.C. 706 governs the new Bus Act.

In the bus exit area, the U.S. Court of Appeals for the Fourth Circuit affirmed a Commission order allowing discontinuance of intrastate bus service.¹⁹ In the pertinent proceeding, West Virginia denied a petition to abandon an intrastate route, and the carrier then petitioned the Commission under 49 U.S.C. 10935 for permission to discontinue the intrastate service.²⁰ The Commission ultimately found that the carrier had established unprofitability under this section of the Act. Finding that the statute makes financial loss relevant to each of the two standards of Section

¹³ The lead case in the Third Circuit is *Port Nanto Express Co. v. Interstate Commerce Commission*, 729 F.2d 204 (3d Cir. 1984) and the lead case in the Eighth Circuit is *Enckson Transport Corp. v. ICC*, 731 F.2d 775 (8th Cir. 1984).

¹⁴ Ex Parte No. 55 (Sub No. 43a), Notice of Proposed Rulemaking, 49 Fed. Reg. 27163 (July 2, 1984).

¹⁵ Removal of Restrictions — Motor Carriers of Passengers, 133 M.C.C. 35 (1982).

¹⁶ *Trailways, Inc. et al. v. ICC*, 727 F.2d 1284 (D.C. Cir. 1984).

¹⁷ *The Commissioner of Transportation of the State of New York v. United States*, No. 84-1424.

¹⁸ 325 U.S. 507 (1945).

¹⁹ *Dunk Assoc. v. ICC*, 747 F.2d 1179 (4th Cir. 1984).

²⁰ Docket No. MC 59236 (Sub No. 74), Petition of Virginia Stage Lines, Inc. for Review of a Decision of the West Virginia Public Service Commission Pursuant to 49 U.S.C. 10935.

10935(e)(1)(A) governing discontinuance ("public interest" and "unreasonable burden on interstate commerce"), the court rejected the argument that the "public interest" test of Section 10935(e)(1)(A) is separate and distinct from the "unreasonable burden" test.

There were a number of significant decisions under the Staggers Act, principally in the areas of rates, exemptions, mergers, and abandonments. With regard to rates, the U.S. Court of Appeals for the District of Columbia Circuit upheld the Commission's application in a particular case of the "stand alone" cost methodology which has been proposed for use in determining the maximum level of railroad coal rates.²¹ The court upheld the Commission's application of the stand-alone cost concept as "an appropriate implementation of differential pricing" on non-competitive traffic by carriers earning inadequate revenues, and as an appropriate tool for determining whether rates exceed a reasonable maximum under the Act.

Responding to an argument that the Commission should have considered Long-Cannon factors,²² the court also held that the statute "does not require the Commission to consider the Long-Cannon factors but only to consider evidence of them." The court emphasized that absent any evidence in a complaint proceeding directly relating to the Long-Cannon factors, the Commission was not required to seek or obtain such evidence.

In a case concerning the application of the Commission's new market domi-

nance rules, the District of Columbia Circuit set aside the Commission's findings that certain railroads did not have market dominance over the transportation of fuel oil.²³ An Administrative Law Judge (ALJ) had found that the railroads had had market dominance, and held that the rates in question were unreasonably high. A Commission Review Board had later reversed the ALJ by finding that there was effective intermodal, geographic, and product competition, and that the railroads therefore lacked market dominance. The court held that the evidence on record did not support the Board's finding of an absence of market dominance, and thus remanded the case to the Commission.

In another important decision, the U.S. Court of Appeals for the Second Circuit upheld the Commission's rail contract tariff disclosure rules.²⁴ The court, however, ordered a limited remand and directed the Commission to promulgate additional rules governing the discovery process in those Section 10713(d) administrative complaint proceedings which challenged contracts.²⁵

The U.S. Court of Appeals for the Eighth Circuit upheld the Commission's determination that a particular rail line qualifies as a "light density line producing inadequate revenues" under 49 U.S.C. 10705a(b)(1) and (2).²⁶ This case represented the first judicial review of a

²¹ *Atomic Electric Power Co. v. ICC*, 744 F.2d 985 (D.C. Cir. 1984). See Ex Parte No. 347, *Coal Rate Guidelines Nationwide*.

²² 49 U.S.C. 10707a(e)(2)(B) and (C).

²³ *Arizona Public Service Co. v. United States*, 742 F.2d 644 (D.C. Cir. 1984).

²⁴ Ex Parte No. 387, *Rail Transportation Contracts*, 367 I.C.C. 2 (1982).

²⁵ *Water Transport Association v. ICC*, 722 F.2d 1025 (2d Cir. 1983).

²⁶ *Widledge Grain and Storage Company, et al. v. ICC*, 720 F.2d 480 (8th Cir. 1983).



Commission decision permitting a light-density line surcharge to take effect following an investigation.

As has been mentioned earlier, the Commission's efforts to exempt the transportation of export coal may be frustrated by a recent adverse decision on appeal.²⁷ However, it should be noted that certiorari is being sought by the Commission and the Solicitor General. In the meantime, the exemption remains in effect (since September 1963). Such is the case also for the Commission's boxcar exemption.²⁸ Except for the Class III-car hire aspect, the exemption remains in effect, despite a partially adverse court decision,²⁹ while the Commission and the Solicitor General seek certiorari.

In the area of intrastate rates, a significant decision was issued by the U.S. Court of Appeals for the Third Circuit.²⁹ The case involved one railroad's attempt to raise its West Virginia intrastate coal rates to the level of existing interstate coal rates. On complaint by a shipper, the West Virginia Public Service Commission ordered the intrastate rates reduced to a level that would yield 175 percent of variable cost. Acting under 49 U.S.C. 11501(c), the Commission reversed the state's decision and authorized the railroad's increased rates.

As a preliminary matter, the court affirmed the requirement of 49 U.S.C. 11501(c) that states follow the "standards and procedures" promulgated and interpreted in decisions and orders of the Commission, as well as those standards and procedures set out in the

Interstate Commerce Act. The court also found that the Commission's review is plenary concerning the question of whether state authorities have complied with standards or procedures according to Section 11501(c). The court next upheld the Commission's decision to set aside the state commission's decision because West Virginia's standards did not comply with those proposed by the Commission, especially relative to "stand-alone" cost calculations and the 15-percent annual limit on rate increases.³⁰ The court remanded the case, however, because the Commission failed to explain adequately its decision to authorize the railroad's proposed rates.

In another intrastate rate case, the U.S. Court of Appeals for the Sixth Circuit vacated a Commission decision under 49 U.S.C. 11501.³¹ The Commission had overturned a Kentucky prescription of rail rates, and authorized the railroad to put into effect the higher rates it had initially filed with the state. The Commission acted because Kentucky had relied on a rate standard which had been rejected by the Commission by the time the ICC had reached its decision in the 49 U.S.C. 11501(c) case.³² The court held that the Commission could not find that a state had failed to apply the correct ratemaking standard unless the Commission itself had already promulgated a legitimate and final standard. Absent such a standard, the court stated, there would be no basis for overturning state standards.

In another significant intrastate rate

²⁷ *Coal Exporters Association v. United States*, 745 F.2d 76 (D.C. Cir. 1984).

²⁸ *Brax Corp. v. United States*, 740 F.2d 1023 (D.C. Cir. 1984).

²⁹ *Wheeling-Pittsburgh Corp. et al. v. ICC*, 723 F.2d 346 (3rd Cir. 1983).

³⁰ Ex Parte No. 347 (Sub No. 1), *Coal Rate Guidelines Nationwide* (not printed), decided December 16, 1981.

³¹ *Kentucky Utilities Company et al. v. United States*, 721 F.2d 537 (6th Cir. 1983).

³² Ex Parte No. 347 (Sub No. 1), *Coal Rate Guidelines Nationwide* (not printed), decided December 16, 1981.

decision, the U.S. Court of Appeals for the Seventh Circuit upheld the Commission's authority to *conditionally* certify states to regulate intrastate transportation according to 49 U.S.C. 11501.³³ It had been the Commission's practice to certify states conditionally while it worked with them in achieving complete state compliance with Federal standards; the court's decision affirmed the Commission's conditional certification power as a reasonable way of carrying out the purposes of the Staggers Act where there were insufficient data upon which to base a grant or a denial of certification.

In the rail merger area, the U.S. Court of Appeals for the District of Columbia Circuit generally affirmed the Commission's approval of the merger of the Union Pacific, Missouri Pacific, and Western Pacific Railroads. The court only remanded the proceeding to the Commission for reconsideration of the Commission's refusal to grant the Denver & Rio Grande Western Railroad independent ratemaking authority over the tracks of the Western Pacific Railroad between Utah and Northern California.³⁴ The court upheld the Commission's construction of 49 U.S.C. 11344(c) by stating that the Staggers Act's increased emphasis on competition modified, but did not basically alter, the ICC's traditional approach to mergers. This approach had always considered the competitive impact of a proposed merger, but not to the exclusion of other factors. The court also recognized that many of the determinations which the Commission must make in assessing a railroad merger are "deter-

minations exclusively within the province of the agency and therefore entitled to deference by the courts." Specifically, the court approved the Commission's determinations on the imposition of, or refusal to impose, conditions, the scope of labor-protective conditions, and compensation for minority shareholders.

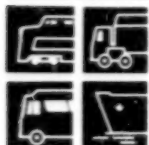
In the rail abandonment area, the U.S. Court of Appeals for the Second Circuit affirmed the Commission's decision not to impose labor protective conditions in either an entire line abandonment or upon a new carrier seeking to take over the operations of one of two abandoning carriers.³⁵ This decision marked the first time that a court has directly held that the Commission is under no statutory obligation to impose labor-protective conditions in entire-line abandonments, despite the language of 45 U.S.C. 10903(b)(2) which states that "each certificate" shall contain provisions to protect the interests of employees. The court examined the legislative history and also noted that the Commission had regularly exercised its discretion in imposing protective conditions upon abandonments. The court further noted that the Commission consistently refused to impose such conditions where a rail carrier was abandoning its entire operations, primarily because there would remain no other rail services performed by the carrier upon which to impose such costs.

In another abandonment proceeding, the U.S. Court of Appeals for the Eighth Circuit affirmed the Commission's consideration of opportunity cost in approving an abandonment in Iowa.³⁶ Ship-

³³ *Illinois Central Gulf Railroad Company v. ICC*, 720 F.2d 958 (7th Cir. 1983).
³⁴ *Southern Pacific Transportation Company, et al. v. ICC*, 736 F.2d 708 (D.C. Cir. 1984).

³⁵ *Railway Labor Executive Association v. ICC*, 735 F.2d 691 (1984).

³⁶ *Canterville Elevator, Inc., et al. v. ICC*, 724 F.2d 668 (8th Cir. 1984), aff'd on rehearing en banc, 735 F.2d 1059 (8th Cir. 1984).



pers had argued that the Commission's use of opportunity costs in approving the abandonment was improper because the railroad in question had not shown that it would have been able to re-invest freed assets in order to yield a rate of return equal to the average railroad cost of capital. Opportunity cost was an important consideration in this instance, since the line generated an operating profit of almost \$60,000 and the annual opportunity cost totaled more than \$200,000.

The court held that the Commission's definition of opportunity cost does not require a carrier to specify how it would re-invest its freed assets, and that opportunity costs may be considered even when assets are to be put to nonrail uses. The court additionally concluded that the traditional balancing of competing interests in abandonment cases assures that "adoption of opportunity cost analysis will not compromise the maintenance of a sound rail transportation system."

The courts of appeals also handed down three important decisions concerning fundamental issues of administrative law, i.e., whether Commission actions that have been affirmed in court may be reviewed by a different court.

The U.S. Court of Appeals for the Fifth Circuit squarely raised this issue when it found³⁷ that it could review *de novo* Commission contract rate rules, which had previously been affirmed by the U.S. Court of Appeals for the Second Circuit.³⁸ The Fifth Circuit stated that whenever a rule is "applied in a particular case, the Hobbs Act does not bar judicial review of the substance of the rule. The Commission has sought a

rehearing *en banc* on this adverse jurisdictional ruling.³⁹

The U.S. Court of Appeals for the Eighth Circuit followed the Fifth Circuit's *State of Texas* decision in a case in which parties which had previously unsuccessfully challenged a Commission policy statement⁴⁰ took a further course of action.⁴¹ In addition to ruling that the Hobbs Act⁴² permits repetitive review of rules, the court also rejected the Commission's argument that the petitioners which had previously challenged the policy were collaterally estopped from relitigating the case. The Commission's petition for rehearing of this adverse ruling was denied.

In a case raising the very same issue, the U.S. Court of Appeals for the District of Columbia Circuit ruled differently from the Eighth Circuit's decision.⁴³ This proceeding concerned standards for determining whether railroads are earning adequate revenues. The Commission had promulgated the standards in 1981, after which they were affirmed in court.⁴⁴ When the Commission later applied those standards, however, the same parties which had originally challenged the standards in court again argued that the standards were unlawful. Unlike the Eighth Circuit, however, the D.C. Circuit refused to hear the repetitive appeal. Instead, it held that the petitioners were similarly collaterally estopped from rules challenges.

³⁷ *State of Texas v. ICC*, supra note 1, filed June 7, 1984.

³⁸ *Ex Parte No. MC 156, Motor Carrier Operating Authority—Railroads*, 132 M.C.C. 978 (1982), aff'd *American Trucking Associations, Inc. v. ICC*, 722 F.2d 1243 (5th Cir. 1984), cert. denied No. 83-2117 (June 22, 1984).

³⁹ *In State Commerce Transit Co., Inc. et al. v. ICC*, 739 F.2d 1373 (8th Cir. 1984).

⁴⁰ *ICC v. WSA*, 80 Stat. 627 (1966).

⁴¹ *Western Coast Traffic League v. ICC*, 735 F.2d 1408 (10th Cir. 1984).

⁴² *Ex Parte No. 393, Standards for Railroad Revenue Rule-making*, 364 U.S. 803 (1961), aff'd *Reisenman and Jacob Ebel R.R. v. ICC*, 367 F.2d 1241, 42-1 (1962), cert. denied 363 U.S. 2463 (1960).

³⁷ *State of Texas v. ICC*, 730 F.2d 409 (5th Cir. 1984).

³⁸ *Western Transport Association, supra*.

FINANCIAL OVERSIGHT

The Commission's financial oversight activities include accounting, auditing, financial analysis, cost analysis, cost development and reporting. These functions involve the preparation, amendment, and interpretation of prescribed accounting and financial reporting rules, the examination and analysis of accounts and financial statements, and the compilation and publishing of transportation statistics and cost studies.

Accounting and Reporting Rulemaking

The Commission's prescribed accounting and reporting systems are continually reviewed with the objective of providing current useful information. This review program includes the modernization of current systems to keep pace with generally accepted accounting principles (GAAP), and to reduce reporting burdens while retaining those requirements which provide data the Commission needs.

During fiscal year 1984, the Commission approved the following changes:

- An amendment to a final rule adopting the depreciation method of accounting for railroad track structure. The amendment was necessary to align certain operating expense accounts with changes the Commission adopted to property accounts within the final rule.¹
- A final rule modifying the Commission's record-preservation regulations. The modifications reduced the length of many record-retention periods, and will allow motor carrier management more autonomy in establishing recordkeeping programs, while simultaneously reducing costs and regulatory burdens.²

Cost and Financial Analysis

During fiscal year 1984, the Commission analyzed cost and financial evidence submitted by railroads and other entities in connection with rates charged for the transportation of coal and other bulk commodities. Such coal rate cases — involving hundreds of millions of dollars — affect virtually every household in the United States through the electric rates charged them by coal-burning utilities. Also analyzed was evidence introduced in proceedings under Section 229 (the Savings Provision) of the Staggers Rail Act of 1980.

The Commission also analyzed cost and financial evidence submitted in connection with motor carrier requests for general rate increases. These analyses included an assessment of the revenue needed to cover operating costs and to provide a fair and reasonable return on invested capital. The revenue generation from a typical "round" of general increase proposals reflecting labor increases is substantial; for example, the April 1984 general increases for trucking companies represented by the nine major motor rate bureaus were expected to generate approximately \$500 million in increased revenues. Cost evidence was examined in determining

¹ Docket No. 36988, *Alternative Methods of Accounting for Railroad Track Structures* (not printed), served January 18, 1984.

² *Review of Preservation of Records Rules*, 367 F.C.R. 904 (1984).

the reasonableness of bus passenger fares in intrastate rate proceedings, and in determining whether intrastate rates covered variable costs in bus market-exit petitions.

The Commission additionally began the evaluation of public comments on a proposal³ to improve existing standards for the determination of railroad revenue adequacy, and a study was undertaken where it was determined that the railroad industry's current cost of capital (i.e. fair rate of return) was 15.3 percent.⁴

The Commission continued to monitor the financial condition of large transportation companies in order to assess their financial ability to provide adequate service to shippers. Quarterly reports were publicly released which revealed latest-quarter and twelve-month earnings, traffic volume and rate-of-return data for Class I railroads, the 100 largest trucking companies, the 15 largest household goods carriers, and the 10 largest bus companies.

The Commission distributes its reports to other government agencies, libraries, shippers, transportation consultants, financial institutions, labor unions and the media. These reports are also included as part of testimony presented by the Commission in Congressional hearings on regulated transportation industries.

Cost Development

During fiscal year 1984, the Commission continued to revise and refine the system design of the Uniform Railroad Costing System (URCS), and public comments in response to a pertinent Commission rulemaking were received

in October 1983.⁵ In July 1984, Congress appropriated \$1 million to fund the Railroad Accounting Principles Board (RAPB). The RAPB was originally established by the Staggers Act, and the Commission anticipates that the RAPB will review the merits of adoption of the URCS system.

The final results of the Commission's fiscal year 1983 User Fee Cost Study, designed to capture and determine labor costs applicable to proposed user fee items, were submitted to the User Fee Task Force in December 1983. The resulting fully distributed, cost-based user fees were published for public comment in February 1984. Comments on the costing procedures were addressed by the Commission and final rules were published and adopted.⁶

During the past fiscal year, the Commission calculated two Cost Recovery Percentages (CRP): the final CRP for fiscal year 1983 was determined to be 342.5 percent of variable costs,⁷ and the proposed CRP for fiscal year 1984 was established at 344.5 percent.⁸ The calculated CRP serves as the jurisdictional threshold for rate regulation of market-dominant traffic when it falls within a prescribed range of between 170 and 180 percent of variable cost. However, since the Commission's calculated CRP is higher than the maximum 180-percent level mandated by the Staggers Act, the 180-percent figure is used instead of the calculated figure.

³ Ex Parte No. 431, *Adoption of Uniform Rail Costing System for Determining Variable Costs for Jurisdictional Threshold and Surcharge Purposes* (not printed), served January 31, 1983.

⁴ Ex Parte No. 246 (Sub No. 2), *Regulations Governing Fees for Services Performed in Connection With Licensing and Related Services* (not printed), served May 1, 1984.

⁵ Ex Parte No. 399, *Cost Recovery Percentage (CRP)* (not printed), served December 23, 1983.

⁶ Ex Parte No. 399, *Cost Recovery Percentage (CRP)* (not printed), served September 27, 1984.

⁷ Ex Parte No. 393 (Sub No. 1), *Standards for Railroad Revenue Adequacy* (not printed), served March 9, 1983.

⁸ Ex Parte No. 452, *Railroad Cost of Capital - 1983* (not printed), served October 31, 1984.

Within the past fiscal year, the Commission issued four quarterly decisions which published the Rail Cost Adjustment Factor (RCAF) as part of a new, streamlined, general rate increase procedure.⁹ On December 27, 1983, the Commission approved an increase of up to 4.1 percent above the level permitted by a decision served on September 21, 1983. By an order served March 20, 1984, the Commission allowed no rate actions because the index had remained constant. On June 20, 1984, the Commission voted to permit increases up to 0.4 percent above levels permitted by its December 27, 1983, decision. Although the index rose 0.5 percent, the Commission imposed a 0.1 percent hold down to correct an error occurring in the first quarter of 1984. On September 20, 1984, the Commission permitted no rate actions because the index had continued to fall.

The Commission issued a Notice of Proposed Rulemaking seeking additional comments with respect to a productivity adjustment to the cost recovery index.¹⁰ Comments were to address the timeliness, accuracy, feasibility and verifiability of a productivity adjustment to the cost recovery index, and comments were also invited to address issues regarding discounts to the index for profit elements.

The Commission continued to monitor diesel fuel prices nationwide during fiscal year 1984, and provided weekly summaries of diesel price figures through its tape recorded Code-A-Phone telephone service.

Directed Service

On September 26, 1979, the Commission concluded that the Rock Island Railroad had exhausted all of its operating funds, and directed the Kansas City Terminal Railway Company (KCT) to operate over the entire Rock Island system, beginning October 5, 1979. This directed-service authority expired on March 23, 1980, and was the first Commission directed-service experience involving such a large and complex operation. As of September 30, 1984, \$88.9 million of a total appropriation of \$91.1 million had been disbursed to the KCT. The Commission had ordered that all directed-service accounting operations be terminated on March 31, 1983.¹¹

KCT has continued to act as a government agent in the payment of various claims, most of which have been liquidated. Pending as of September 30, 1984, however, was a final determination of a management fee to the KCT for services performed in the elimination of directed service.

Subsequent to the termination of directed service on March 23, 1980, and with advice from the Department of Transportation, the Commission authorized 24 railroads to operate certain Rock Island line segments without government funding. The railroads provided service on a voluntary basis so that a substantial portion of Rock Island service could be continued. A number of railroads expressed an interest in purchasing Rock Island lines which they were operating, and some lines were purchased. The ICC also authorized the State of South Dakota and three rail-

⁹ Ex Parte No. 290 (Sub-No. 2), *Railroad Cost Recovery Procedures* (not printed), served December 27, 1983; March 20, 1984; June 20, 1984; and September 20, 1984.

¹⁰ Ex Parte No. 290 (Sub-No. 4), *Railroad Cost Recovery Procedures—Productivity Adjustment* (not printed), served September 27, 1984.

¹¹ Directed Service Order No. 1398, *Kansas City Term. Ry. Co.—Operation—Chicago R.I. & P.* (not printed), served December 9, 1981.



roads to rehabilitate certain trackage segments. Federal subsidy totaled approximately \$5.4 million, of which \$2.4 million was disbursed to South Dakota and \$3 million to three railroads.

Auditing

Functions performed by Commission auditors in fiscal year 1984 included the following:

- The performance of audits at most Class I railroads and various motor companies.
- Examinations of the accounting records of directed-service operations.
- Investigations of transactions between railroads and affiliated companies to determine the impact on the railroads' financial conditions.
- Investigation of carrier violations of Commission regulations, and referral of violations to appropriate government enforcement agencies.
- Performance of a regular annual internal audit of the Commission's fiscal operations.
- The completion of an investigation of the financial and operational data contained in projections prepared by Conrail for a report to Congress on that railroad's profitability.



APPENDIX A

Commission Organization

The major bureaus and offices of the Commission are listed below. Heads of each bureau or office report to the Chairman via the channels indicated on the organizational chart.

STAFF OFFICIALS

Office of the Chairman

Chief of Staff

Karl Morel

Office of Public Affairs

Robert R. Dahlgren

Director

Office of Legislation and Governmental Affairs

Brenda Yager

Director

Small Business Assistance Office

Dan G. King

Director

Educational Employment Opportunity Office

Alexander W. Dobbins

Director

Office of the Managing Director

Managing Director

Martin E. Foley

Director, Research Office

Richard H. Moders

Chief, Budget and Fiscal Office

Mary G. Hoggan

Chief, Administrative Services

Virginia L. Schultz

Chief, Grants Development

Edward F. Weikert

Office of the Secretary

Secretary

James H. Bayne

Administrative Staff

Kathleen M. King

Office of the General Counsel

General Counsel

Robert S. Burk (Acting)

Assistant General Counsel

Henry F. Rush (Acting)

Assistant General Counsel

Ellen D. Hanson

Chief, Legal Policy and Litigation

Lawrence H. Richmond

Chief, Legal Policy

Director

Harper P. Hardy

Chief, Litigation

R. David G. Lewis

Chief, Office for Protection of Records

Charles E. Gromer

Chief, Office for Protection of Minor Groups

Robert J. Sporn

Director

Office of the Assistant Secretary

Assistant Secretary for Analysis

Walter H. Southard

Director

Chief, Grants and Resources Planning

Michael E. Sullivan

Chief, Office of Management and Employment

Carl P. Basch

Chief, Office of Research and Analysis

Leland J. Gardner

Office of Hearings

Chief Administrative Law Judge

David H. Altard

Assistant Chief Administrative Law Judge

James E. Hopkins

Office of Special Counsel

Special Counsel

Edward J. Schack

Deputy Special Counsel

James A. Clark

Bureau of Accounts

Director

Ronald S. Young

Deputy Director

William F. Moss, III

Office of Compliance and Consumer Assistance

Director

J. Warren MacFarland

Associate Director

Bernard Gaillard

Deputy Director, Section of Operations

John H. O'Brien

Deputy Director, Section of Enforcement

Charles E. Wagner

Bureau of Traffic

Director

Neil S. Llewellyn

DIRECTORY OF INTERSTATE COMMERCE COMMISSION FIELD OFFICES AND REGIONAL HEADQUARTERS

Region I

Regional Headquarters	Robert L. Atam, Regional Director 150 Causeway Street, Room 501 Boston, MA 02114
Connecticut	135 High Street, Room 324, Hartford, CT 06103
Maine	76 Bear Street, Room 303, Portland, ME 04101
Massachusetts	150 Causeway Street, Room 501 Boston, MA 02114
New Hampshire	201 Federal Building, 1000 Main Street Springfield, MA 01103
New Jersey	James C. Cleveland Federal Building 55 Exchange Street, Room 214 Camden, NJ 08101
New York	Rockefeller Federal Building 300 Broadway, Room 1450 New York, NY 10007
Pennsylvania	450 Federal Building, 333 Washington Street Harrisburg, PA 17101
Rhode Island	1000 Rhode Island Federal Building 26 Exchange Street, Room 201 Providence, RI 02903
Vermont	100 Exchange Building, Room 201 14 Water Street, Room 401 Wilmington, VT 05361
Washington	1100 Washington Building, 1100 Washington Street Seattle, WA 98101

Region II

Regional Headquarters	M. Lynn Kline, Regional Director 100 Broadway, Room 101 New York, NY 10007
Connecticut	135 High Street, Room 324, Hartford, CT 06103
Delaware	300 Delaware Street, Room 201, Newark, NJ 07102
District of Columbia	1100 Pennsylvania Building, Room 201 Washington, DC 20004
Florida	1000 Florida Building, Room 201 Miami, FL 33101
Georgia	1000 Georgia Building, Room 201 Atlanta, GA 30303
Illinois	1000 Illinois Building, Room 201 Chicago, IL 60601
Indiana	1000 Indiana Building, Room 201 Indianapolis, IN 46201
Iowa	1000 Iowa Building, Room 201 Des Moines, IA 50301
Kansas	1000 Kansas Building, Room 201 Topeka, KS 66601
Michigan	1000 Michigan Building, Room 201 Detroit, MI 48201
Minnesota	1000 Minnesota Building, Room 201 Minneapolis, MN 55401
Missouri	1000 Missouri Building, Room 201 St. Louis, MO 63101
Montana	1000 Montana Building, Room 201 Billings, MT 59101
Nebraska	1000 Nebraska Building, Room 201 Lincoln, NE 68501
Nevada	1000 Nevada Building, Room 201 Las Vegas, NV 89101
New Hampshire	201 Federal Building, 1000 Main Street Springfield, MA 01103
New Jersey	James C. Cleveland Federal Building 55 Exchange Street, Room 214 Camden, NJ 08101
New Mexico	1000 New Mexico Building, Room 201 Albuquerque, NM 87101
New York	Rockefeller Federal Building 300 Broadway, Room 1450 New York, NY 10007
North Carolina	1000 North Carolina Building, Room 201 Raleigh, NC 27601
North Dakota	1000 North Dakota Building, Room 201 Bismarck, ND 58101
Ohio	1000 Ohio Building, Room 201 Columbus, OH 43201
Oklahoma	1000 Oklahoma Building, Room 201 Oklahoma City, OK 73101
Oregon	1000 Oregon Building, Room 201 Portland, OR 97201
Pennsylvania	450 Federal Building, 333 Washington Street Harrisburg, PA 17101
Rhode Island	1000 Rhode Island Federal Building 26 Exchange Street, Room 201 Providence, RI 02903
South Carolina	1000 South Carolina Building, Room 201 Columbia, SC 29201
South Dakota	1000 South Dakota Building, Room 201 Sioux Falls, SD 57101
Tennessee	1000 Tennessee Building, Room 201 Nashville, TN 37201
Texas	1000 Texas Building, Room 201 Dallas, TX 75201
Utah	1000 Utah Building, Room 201 Salt Lake City, UT 84101
Vermont	100 Exchange Building, Room 201 14 Water Street, Room 401 Wilmington, VT 05361
Virginia	1000 Virginia Building, Room 201 Richmond, VA 23201
Washington	1100 Washington Building, 1100 Washington Street Seattle, WA 98101
West Virginia	1000 West Virginia Building, Room 201 Martinsburg, WV 26101
Wisconsin	1000 Wisconsin Building, Room 201 Milwaukee, WI 53201
Wyoming	1000 Wyoming Building, Room 201 Cheyenne, WY 82001

DIRECTORY OF INTERSTATE COMMERCE COMMISSION FIELD OFFICES AND REGIONAL HEADQUARTERS — Continued

Virginia	10,507 Federal Building, 400 North 4th Street Richmond, VA 23240
West Virginia	416 Old Post Office Building, 1, Market Square S.W., Wheeling, W. Va. 26060

Region III

Regional Headquarters — James R. Mahoney, Regional Director
1776 Peachtree Street, N.W., Room 400
Atlanta, GA 30309

Alabama — 2175 Building, Suite 100, 21st, East Avenue
North Birmingham, AL 35203

Florida — 4097 Carmichael Avenue, Suite 100
Jacksonville, FL 32207

Murphy Building, Suite 100, 841 N.W. 1st
Tallahassee, FL 32301

Georgia — 1776 Peachtree Street, N.W., Room 400
Atlanta, GA 30309

Kentucky — 1260 S. Third Street and West Main Street
Louisville, KY 40202

Mississippi — Federal Building, Suite 1400, 100 West 10th
Street, Jackson, MS 39201

North Carolina — Room 100, 1000 Martin Luther Building
8000 Independence Road
Charlotte, NC 28203

South Carolina — 5200 Farmington Road, Suite 100
1800 W. Columbia, Columbia, SC 29205
Columbia, SC 29201

Tennessee — Room 200, Federal Building, Suite 200
160 North Main Street, Memphis, TN 38103
Federal Building, 601 West 10th, 24
Nashville, TN 37203

Region IV

Regional Headquarters	William Redmond, Jr., Regional Director, Everett McKinley Dirksen Building, Room 1304 219 South Dearborn Street Chicago, IL 60604
Illinois	Everett McKinley Dirksen Building, Room 1304 219 South Dearborn Street Chicago, IL 60604
Indiana	429 Federal Building and U.S. Courthouse 46 East Ohio Street, Indianapolis, IN 46204
Michigan	201 Corn Building, 300 East Michigan Lansing, MI 48933
Minnesota	414 Federal Building and U.S. Courthouse 110 South Fourth Street Minneapolis, MN 55401
North Dakota	453 Federal Building and U.S. Post Office 675 2nd Avenue North, Fargo, ND 58102
South Dakota	Room 308, Federal Building, 225 S. Pierre Street Pierre, SD 57501
Wisconsin	U.S. Federal Building and Courthouse 517 East Wisconsin Avenue, Room 601 Milwaukee, WI 53202

Region V

Regional Headquarters	Jack K. Huff, Regional Director 411 West 7th Street, Suite 500 Fort Worth, TX 76102
Arkansas	1106 Federal Building, 10th Floor, AR 72201
California	126 Federal Building, 110 Walnut Street San Marcos, CA 92069
Colorado	100th Federal Building & U.S. Post Office 101 Lincoln Avenue, New Orleans, LA 70113
Florida	1601 Federal Building, 911 Walnut Street Jacksonville, FL 32209
Georgia	275 North 12th Street, Room 1465 Savannah, GA 31401
Idaho	Room 401, Federal Office Building 106 South 15th Street, Omaha, NE 68102
Illinois	240 Clark U.S. Post Office and Courthouse 215 North Main Street O'Fallon, IL 62450
Indiana	411 West 7th Street, Suite 500 Fort Worth, TX 76102
Iowa	401 Federal Building and U.S. Courthouse 10th Block Avenue, Des Moines, IA 50319

DIRECTOR OF INTERSTATE COMMERCE COMMISSION FIELD OFFICES AND REGIONAL HEADQUARTERS — Continued

Region VI

Regional Headquarters	Almond E. Baker, Regional Director, Suite 900 2411 Main Street, San Francisco, CA 94105
Alaska	Federal Building and U.S. Customs House 701 C Street, Box 7 Anchorage, AK 99503
Arizona	2028 Federal Building, 30 North 1st Avenue Phoenix, AZ 85025
California	1321 Federal Building 300 North Los Angeles Street Los Angeles, CA 90012 211 Main Street, Suite 500 San Francisco, CA 94105 P. O. Box 316, San Francisco, CA 94103
Colorado	1411 U.S. Customs House, 721 19th Street Denver, CO 80202
Illinois	Federal Building & U.S. Court House 550 West Van Buren Street Chicago, IL 60604
Indiana	Room 212, U.S. Federal Office Building 200 East Avenue North Bloomington, IN 47403
Nebraska	107 Federal Building, 755 North Omaha Street Omaha, NE 68102
New Mexico	3006 Federal Building, 550 North Avenue, W. Albuquerque, NM 87102
Ohio	Room 1569, 120 1/2 W. Broad Cleveland, OH 44104
Oregon	4211 Federal Building, 120 1/2 2nd Street San Francisco, CA 94105
Washington	856 Federal Building, 2000 1st Avenue Seattle, WA 98104
Washington	First Federal Building, 400 1st Street, NW 111 South Washington, Capitol, WA 98101

INTERSTATE COMMERCE COMMISSIONERS 1887-1984

Interstate Commerce Commissioners	State	Party	Oath of Office	End of Service
1. COOLEY, Thomas M.	Mich	Rep	Mar 31 1887	Jan 12, 1892
2. MORRISON, William R.	Ill	Dem	Mar 31 1887	Dec 31, 1897
3. SCHOONMAKER, Augustus	N.Y.	Dem	Mar 31 1887	Dec 31, 1890
4. WALKER, Aldene F.	Vt	Rep	Mar 31 1887	Mar 31 1889
5. BRAGG, Walter L.	Ala	Dem	Mar 31 1887	Aug 21, 1891
6. VEAZEY, Wheelock G.	Vt	Rep	Sept 10 1889	Dec 20 1896
7. KNAPP, Martin A.	N.Y.	Rep	Mar 2 1891	Dec 12, 1910
8. McDILL, James W.	Iowa	Rep	Jan 13 1892	Feb 28, 1894
9. CLEMENTS, Judson C.	Ga	Dem	Mar 17 1892	June 18, 1917
10. YEOMANS, James D.	Iowa	Dem	May 2 1894	Mar 6, 1905
11. PROUTY, Charles A.	Vt	Rep	Dec 21 1896	Feb 2, 1914
12. CALHOUN, William J.	Ill	Rep	Mar 21 1898	Sept 30 1899
13. FIFER, Joseph W.	Ill	Rep	Nov 4 1899	Dec 30, 1905
14. COCKRELL, Francis M.	Mo	Dem	Mar 11 1905	Dec 31 1910
15. LANE, Franklin K.	Calif	Dem	July 2 1906	Mar 5, 1913
16. CLARK, Edgar E.	Iowa	Rep	July 31 1906	Aug 13 1921
17. HARLAN, James S.	Ill	Rep	Aug 28 1906	Dec 31 1918
18. McCHORD, Charles C.	Ky	Dem	Dec 31 1910	Jan 1 1926
19. MEYER, Balthasar H.	Wis	Rep	Dec 31 1910	Apr 30 1939
20. MARBLE, John H.	Calif	Dem	Mar 10 1913	Nov 21 1913
21. HALL, Henry C.	Colo	Dem	Mar 21 1914	Jan 13 1928
22. DANIELS, Winthrop M.	N.J.	Dem	Apr 6 1914	July 1 1923
23. AITCHISON, Clyde B.	Oreg	Rep	Oct 5 1917	July 10 1952
24. WOOLLEY, Robert W.	Va	Dem	Oct 5 1917	Dec 31 1920
25. ANDERSON, George W.	Mass	Dem	Oct 15 1917	Nov 5 1918
26. EASTMAN, Joseph B.	Mass	ind	Feb 17 1919	Mar 15 1944
27. FORD, Henry J.	N.J.	Dem	June 11 1920	Mar 4, 1921
28. POTTER, Mark W.	N.Y.	Dem	June 24 1920	Feb 20 1925
29. ESCH, John J.	Wis	Rep	Mar 28 1921	May 29 1928
30. CAMPBELL, Johnston B.	Wash	Rep	May 5 1921	Jan 6 1930

	Interstate Commerce Commissioners	State	Party	Oath of Office	End of Service
31	LEWIS, Ernest I.	Ind.	Rep.	May 5, 1921	Dec. 31, 1932
32	COX, Frederick I.	N.J.	Rep.	Sept. 1, 1921	Dec. 31, 1926
33	McMANAMY, Frank	D.C.	Dem.	June 28, 1923	Apr. 30, 1939
34	WOODLOCK, Thomas F.	N.Y.	Dem.	Apr. 1, 1925	Aug. 31, 1930
35	TAYLOR, Richard V.	Ala.	Dem.	Jan. 16, 1926	Dec. 31, 1929
36	BRAINERD, Ezra Jr.	Okla.	Rep.	Feb. 23, 1927	Dec. 31, 1933
37	PORTER, Claude R.	Iowa	Dem.	Jan. 28, 1928	Aug. 17, 1946
38	FARRELL, Patrick J.	D.C.	Dem.	June 7, 1928	Dec. 31, 1934
39	LEE, William E.	Idaho	Rep.	Jan. 18, 1930	Aug. 18, 1953
40	TATE, Hugh M.	Tenn.	Rep.	Feb. 28, 1930	Sept. 16, 1937
41	MAHAFFIE, Charles D.	D.C.	Dem.	Sept. 2, 1930	Dec. 31, 1954
42	MILLER, Carroll	Pa.	Dem.	June 14, 1933	Dec. 24, 1949
43	SPLAWN, Walter M. W.	Tex.	Dem.	Feb. 1, 1934	June 30, 1953
44	CASKIE, Marion M.	Ala.	Dem.	Aug. 26, 1935	Mar. 31, 1940
45	ROGERS, John L.	Tenn.	Rep.	Sept. 16, 1937	Apr. 30, 1952
46	ALLDREDGE, J. Haden	Ala.	Dem.	May 1, 1939	Oct. 31, 1955
47	PATTERSON, William J.	N.D.	Ind.	July 31, 1939	July 10, 1953
48	JOHNSON, J. Monroe	S.C.	Dem.	June 3, 1940	June 4, 1956
49	BARNARD, George M.	Ind.	Rep.	Dec. 2, 1944	Jan. 2, 1949
50	MITCHELL, Richard F.	Iowa	Dem.	Feb. 3, 1947	June 15, 1959
51	CROSS, Hugh W.	Ill.	Rep.	Apr. 11, 1949	Nov. 25, 1955
52	KNUDSON, James K.	Utah	Rep.	Apr. 20, 1950	May 22, 1954
53	ELLIOTT, Kelso	Ind.	Rep.	July 10, 1952	Feb. 29, 1956
54	ARPAIA, Anthony F.	Conn.	Dem.	July 11, 1952	Mar. 15, 1960
55	CLARKE, Owen	Wash.	Rep.	July 10, 1953	Jan. 15, 1958
56	FREAS, Howard G.	Calif.	Rep.	Aug. 18, 1953	Dec. 31, 1966
57	TUGGLE, Kenneth H.	Ky.	Rep.	Sept. 8, 1953	July 31, 1975
58	WINCHELL, John H.	Colo.	Rep.	July 28, 1954	Apr. 3, 1961
59	HUTCHINSON, Everett	Tex.	Dem.	Feb. 1, 1955	Mar. 31, 1965
60	MURPHY, Rupert L.	Ga.	Dem.	Dec. 30, 1955	Aug. 31, 1978
61	MINOR, Robert W.	Ohio	Rep.	Feb. 15, 1956	Sept. 30, 1958
62	WALBATH, Laurence K.	Fla.	Dem.	Mar. 29, 1956	June 30, 1972
63	McPHERSON, Donald P. Jr.	Pa.	Rep.	June 4, 1956	Mar. 29, 1963
64	GOFF, Abe McGregor	Idaho	Rep.	Feb. 12, 1958	July 30, 1967
65	WEBB, Charles A.	Va.	Rep.	Sept. 30, 1958	Mar. 31, 1967
66	HERRING, Clyde E.	Iowa	Dem.	Sept. 21, 1959	May 25, 1964
67	BUSH, John W.	Ohio	Dem.	Apr. 3, 1961	Nov. 2, 1972
68	TUCKER, William H.	Mass.	Dem.	Apr. 3, 1961	Dec. 31, 1967
69	TIERNEY, Paul J.	Md.	Rep.	Mar. 29, 1963	Feb. 28, 1970
70	BROWN, Virginia Mae	W.Va.	Dem.	May 25, 1964	July 23, 1979
71	BEASON, Willard	Tex.	Dem.	Sept. 8, 1965	July 31, 1975
72	STAFFORD, George M.	Kans.	Rep.	Apr. 26, 1967	Aug. 31, 1980
73	SYMPERS, Grant E.	Calif.	Rep.	July 31, 1967	Feb. 5, 1968
74	HARDIN, John W.	Ind.	Rep.	July 31, 1967	Aug. 31, 1977

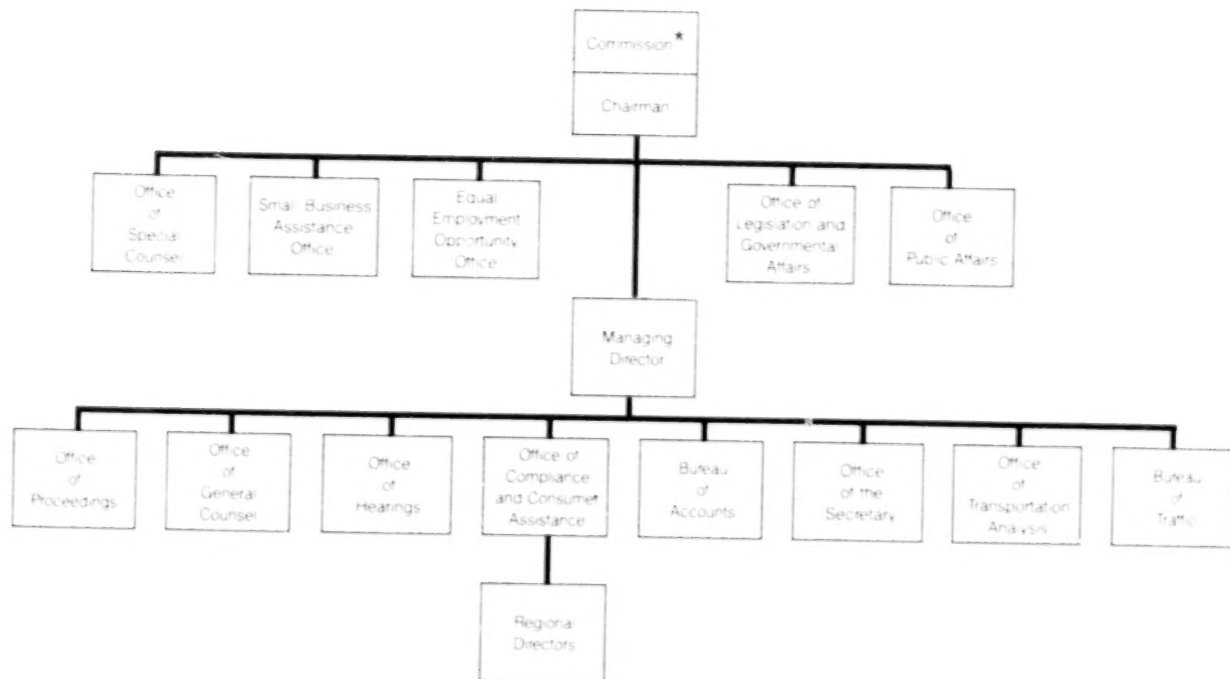
Interstate Commerce Commissioners		State	Party	Oath of Office	End of Service
75	BURKE Wallace R.	Conn	Dem	Aug 21 1968	June 28 1969
76	JACKSON Donald L.	Calif	Rep	Mar 20 1969	June 30 1972
77	GRESHAM Robert C.	Md	Rep	Dec 15 1969	June 18 1982
78	BREWER W Donald	Colo	Rep	July 23 1970	June 30 1974
79	WIGGIN Chester M. Jr.	N.H.	Rep	Oct 24 1972	July 31 1973
80	McFARLAND Alfred T.	Tenn	Ind	Nov 1 1972	Nov 10 1977
81	MONTEJANO Rodolfo	Calif	Dem	Nov 3 1972	Mar 2 1973
82	O NEAL A Daniel Jr.	Wash	Dem	Apr 12 1973	Dec 31 1979
83	CLAPP Charles L.	Mass	Rep	Mar 14 1974	Mar 19 1982
84	CORBER Robert J.	Va	Rep	Mar 13 1975	Dec 1 1976
85	CHRISTIAN Betty Jo	Tex	Dem	Apr 7 1976	Dec 31 1979
86	TRANTUM Thomas A.	Conn	Rep	July 23 1979	July 31 1981
87	GASKINS Darius W.	D.C.	Dem	July 23 1979	Feb 1 1981
88	ALEXIS Marcus	Ill	Dem	Aug 27 1979	June 30 1981
89	GILLIAM Reginald E.	Va	Dem	Apr 21 1980	Feb 1 1983
90	TAYLOR Reese H. Jr.	Nev	Rep	June 25 1981	
91	STERRETT Malcolm M. B. ¹	Md	Rep	Feb 12 1982	
92	ANDRE Frederic N. ²	Ind	Rep	Mar 19 1982	
93	SIMMONS J. J. III ³	Okla	Dem	Apr 27 1982	Feb 28 1983
				Sept 10 1984	
94	GRADISON Heather J. ²	Ohio	Rep	June 18 1982	
95	LAMBOLEY Paul H. ²	Nev	Dem	Sept 11 1984	
96	STRENIO Andrew J. Jr. ²	Md	Dem	Sept 14 1984	

¹ Received appointment only, not confirmed.

² Currently serving.

³ Commissioner Simmons resigned as a commissioner member in February 1984 following confirmation as Under Secretary of the Department of the Interior. He resigned the Commission in September 1984 following his Presidential appointment and Senate confirmation.

INTERSTATE COMMERCE COMMISSION



* In deciding most proceedings, the Commission is divided into two divisions of general jurisdiction, each comprised of three Commissioners. Rulemakings and significant adjudications are decided by the entire Commission.

APPENDIX B

Commission Workload

TABLE 1. — Distribution by method of disposition of proceedings cases opened and closed during fiscal year 1984

Case Type	Motor Matters					
	Closings					Total
	Open-ings	Opposed	Un- opposed	Dis- missed Rejected With- drawn	Other	
Rulemaking	3	6	0	0	0	6
Motor Carrier Licensing	12,349 ¹	889	11,497	547	9	12,942
Passenger Carrier Exit	16	20	0	1	0	21
Water Carrier Licensing	45	4	39	2	1	46
Freight Forwarder Licensing	119	10	120	4	0	134
Property Broker Licensing	1486	5	1356	96	3	1460
Motor Carrier Complaints	17	14	0	0	0	14
Restriction Removal	77	1	65	13	13	92
Investigation and Suspension	2	2	0	0	0	2
Motor Rate	19	27	0	287 ²	5	319
Passenger Rate Review (State)	25	23	0	0	0	23
Motor Carrier Finance	457 ³	71	349	54	5	479
Small Carrier Transfer	786	0	767	30	13	810
Motor Finance Temporary Authority	233	0	215	6	8	229
Totals	15,634	1072	14,408	1040	57	16,577

¹146 were passenger entry applications.

²Refunds filed by motor contract carriers of property were rendered mostly by Docket Ex Parte No. MC-100 (Exemption - Motor Contract Carriers Tariff Filing Requirements, 133 M.C.C. 150 (1983)).

³433 filings were petitions for exemption filed under Docket Ex Parte 400 (Sub 1).

Rail Matters						
Case Type	Closings					Total
	Open-ings	Opposed	Un- opposed	Dis- missed Rejected With- drawn	Other	
Rulemaking	5	7	0	0	0	7
Abandonments (Non-Conrail)	244	65	103	5	0	173
Abandonments (Conrail)	394	0	320	4	0	324
Abandonment Exemptions	201	159	4	14	0	177
Securities	19	15	0	3	0	18
Other Finance	79	39	25	18	0	82
Investigation & Suspension	1	0	0	0	1	1
Rate Complaint	41	31	0	93	0	124
Tariff Exemption	6	0	0	0	0	0
Other Rate ¹	206	38	0	6	0	44
Totals	1196	354	452	143	1	850

¹Includes 386 notices of insufficient revenues.

²Includes construction, trackage rights, licensing, etc.

³Includes rate bureau agreements, petitions for declaratory order, interstate rate review, etc.

TABLE 2 — Rulemaking proceedings pending and closed during fiscal year 1984
 (* indicates actions completed)

RULES AFFECTING THE BROAD RANGE OF TRANSPORTATION

Ex Parte No. MC-1	Payment of Rates and Charges of Motor Carriers
RAILROADS	
Ex Parte No. 43 (Sub No. 10)	Lease and Interchange of Vehicles
Ex Parte No. 137*	Contracts for Protective Services
Ex Parte No. 137 (Sub No. 334)*	Contract for Protective Services
Ex Parte No. 230 (Sub No. 5A)	Petition to Exempt Rail Movement of New Trailers and Containers
Ex Parte No. 230 (Sub No. 6)	Improvement of TOFC/COFC Regulation
Ex Parte No. 241 (Sub No. 1)	Investigation of Adequacy of Railroad Freight Car Ownership, Car Utilization, Distribution, Rules and Practices
Ex Parte No. 270 (Sub No. 5)	Investigation of Railroad Freight Structure — Iron Ores
Ex Parte No. 270 (Sub No. 6)	Investigation of Railroad Freight Structure — Scrap Iron and Steel
Ex Parte No. 271 (Sub No. 8A)*	Exemption of Out of Service Lines (Discontinuance of Service and Trackage Rights)
Ex Parte No. 274 (Sub No. 9)*	Abandonment of Railroad Lines and Discontinuance of Service — Offers of Financial Assistance
Ex Parte No. 274 (Sub No. 10)*	Environmental Notices in Abandonment and Rail Exemption Proceedings
Ex Parte No. 274 (Sub No. 11)*	Rail Abandonments — Public Use Condition
Ex Parte No. 282 (Sub No. 4a)*	Forced Sale Procedures for Bankrupt Railroad Lines
Ex Parte No. 293 (Sub No. 2)	Railroad Cost Recovery Procedures
Ex Parte No. 293 (Sub No. 4)	Railroad Cost Recovery Procedures — Productivity Adjustment Factor
Ex Parte No. 314	Investigation of Freight Rates for the Transportation of Recyclables and Recycled Materials
Ex Parte No. 328	Investigation of Tank Car Allowance System
Ex Parte No. 334	Car Service Compensation — Basic Per Diem
Ex Parte No. 334 (Sub No. 5)	Zone of Reasonableness for Car Hire Charges
Ex Parte No. 346 (Sub No. 3)*	Rail General Exemption Authority — Long and Short-Haul Transportation
Ex Parte No. 346 (Sub No. 7)*	Railroad Exemption — Export Coal
Ex Parte No. 346 (Sub No. 8)*	Exemption from Regulation — Boxcar Traffic
Ex Parte No. 346 (Sub No. 14)*	Rail General Exemption Authority — Miscellaneous Agricultural Commodities
Ex Parte No. 346 (Sub No. 15)*	Exemption from Regulation — Rail Transportation of Frozen Foods

RAILROADS — Continued

Ex Parte No. 346 (Sub-No. 18)*	Exemption from Regulation — Poultry, Meat and Dairy Products
Ex Parte No. 346 (Sub-No. 19)	Boxcar Car Hire and Car Service
Ex Parte No. 347 (Sub-No. 1)	Coal Rate Guidelines — Nationwide
Ex Parte No. 387	Railroad Transportation Contracts
Ex Parte No. 388	State Intrastate Rail Rate Authority
Ex Parte No. 394 (Sub-No. 1)	Cost Ratio for Recyclables — 1983 Determination
Ex Parte No. 399	Cost Recovery Percentage
Ex Parte No. 421	Complaints Filed Under Staggers Rail Act of 1980
Ex Parte No. 431	Adoption of the Uniform Railroad Costing System for Determining Variable Costs for the Purposes of Surcharge and Jurisdictional Threshold Calculations
Ex Parte No. 438*	Acquisition of Motor Carriers by Railroads
Ex Parte No. 444	Electronic Filing of Tariffs
Ex Parte No. 445	Standards for Intramodal Rail Competition
Ex Parte No. 446*	Alaska Railroad Certification
Ex Parte No. 447*	Petition to Delay Application of Direct Connector Requirement to Joint Rates
Ex Parte No. 452	Railroad Cost of Capital — 1983

TRUCK AND BUS COMPANIES

Ex Parte No. 55 (Sub-No. 43A)*	Acceptable Forms of Request for Operating Authority (Motor Carriers and Brokers of Property)
Ex Parte No. 55 (Sub-No. 57)	Exemption of Certain Transactions under 49 U.S.C. 11343
Ex Parte No. 297 (Sub-No. 7)	Motor Carrier Rate Bureau — Expansion of Collective Ratemaking Territories
Ex Parte No. MC-37 (Sub-No. 36)	Houston-Texas Commercial Zone
Ex Parte No. MC-37 (Sub-No. 37)	International Trade Center — Petition for Extension of New York Commercial Zone
Ex Parte No. MC-43 (Sub-No. 14)	Modification of Lease & Interchange Rules
Ex Parte No. MC-43 (Sub-No. 15)	Thirty-Day Leasing Requirement (49 CFR 105.7)
Ex Parte No. MC-43 (Sub-No. 16)	Lease and Interchange of Equipment
Ex Parte No. MC-43 (Sub-No. 18)	Truck Owner-Operators Association — Clarification of Escrow Funds
Ex Parte No. MC-64 (Sub-No. 24)	Special Temporary Authority Procedures
Ex Parte No. MC-65 (Sub-No. 6)	Trailways, Inc. — Passenger Superhighway & Deviation Rules
Ex Parte No. MC-67 (Sub-No. 8)*	Rules Governing TA and ETA

TABLE 2 — Rulemaking proceedings pending and closed during fiscal year 1984
— Continued

TRUCK AND BUS COMPANIES — Continued	
Ex Parte No. MC 73 (Sub-No. 1)	Interchange Policies at International Boundary Lines
Ex Parte No. MC 82 (Sub-No. 4)	Procedures in Motor Carrier Revenue Proceedings — Intercity Bus Industry
Ex Parte No. MC 95 (Sub-No. 3)	Adequacy of Intercity Motor Common Carrier Passenger Service
Ex Parte No. MC 97 (Sub-No. 2)	Investigation into Practices of Common Carriers of Property on Residential and Redelivered Shipments
Ex Parte No. MC 122 (Sub-No. 4)	Intercompany Hauling — Interpretation
Ex Parte No. MC 142 (Sub-No. 1)*	Removal of Restrictions from Authorities of Motor Carriers of Property
Ex Parte No. MC 142 (Sub-No. 2)*	Freight Forwarder Restrictions
Ex Parte No. MC 165 (Sub-No. 1)*	Motor Contract Carriers of Property — Proposal to Allow Issuance of Permits Authorizing Industry-wide Service
Ex Parte No. MC 169*	Expansion of ZORF — Motor Common Carriers of Freight and Freight Forwarders
Ex Parte No. MC 170*	Short Notice Effectiveness for Independently Filed Motor and Freight Forwarder Rates
Ex Parte No. MC 171*	Bus Schedule Changes — Alabama Public Service Commission
Ex Parte No. MC 172	Withdrawal of Antitrust Immunity for Collective Rate-making on Small Shipments

TABLE 3 — Listing of formal significant cases, September 30, 1984

MOTOR SECTION		
Number	Title Description	Statutory Deadline
1. Ex Parte No. 55 (Sub-No. 43A) and Ex Parte No. MC 142 (Sub-No. 1)	Acceptable Forms of Requests for Operating Authority (Motor Carriers and Brokers of Property) Removal of Restriction from Authorities of Motor Carriers of Property	None
2. Ex Parte No. MC 64 (Sub-No. 2A)	Special Temporary Authority Procedures	None
3. Ex Parte No. MC 65 (Sub-No. 6)	Petition to Expand Passenger Motor Carrier Superhighway & Deviation Rules	None
4. Ex Parte No. MC 73 (Sub-No. 1)	Interchange Policies at International Boundaries	None
5. Ex Parte No. MC 95 (Sub-No. 3)	Regulations Governing The Adequacy of Intercity Motor Common Carrier Passenger Service	None
6. Ex Parte No. MC 43 (Sub-No. 15)	Thirty Day Loading Requirement	

MOTOR SECTION

<i>Number</i>	<i>Title Description</i>	<i>Statutory Deadline</i>
1. Ex Parte No. 55 (Sub No. 57)	Exemption of Transactions Under 49 U.S.C. §11343 Involving Certain Motor Carriers of Property	None
6. Ex Parte No. MC-112	Withdrawal of Antitrust Immunity for Collective Ratemaking on Small Shipments	None
9. Ex Parte No. MC-97 (Sub No. 2)	Investigation into Practices of Motor Common Carriers of Property	None
10. Ex Parte No. MC-43 (Sub No. 14)	Lease and Interchange Regulations—Master Leases	None
11. Ex Parte No. 297 (Sub No. 7)	Motor Carrier Rate Bureaus—Expansion of Collective Ratemaking Territory	None

RAIL SECTION

<i>Number</i>	<i>Title Description</i>	<i>Statutory Deadline</i>
1. Ex Parte No. 13 and MC-1	Regulations for Payment of Rates and Charges	None
2. Ex Parte No. 230 (Sub No. 6)	Improvement of TOFC/COFC Regulation—Railroad Affiliated Motor Carriers and Other Motor Carriers	None
3. Ex Parte No. 262 (Sub No. 9)	Railroad Consolidation Procedures—Trackage Rights Exemption	None
4. Ex Parte No. 334	Car Service Compensation—Basic Per Diem Charges—Formula Revision in Accordance with the Railroad Revitalization and Regulatory Reform Act of 1976	None
5. Ex Parte No. 334 (Sub No. 5)	Zone of Reasonableness for Car Hire Charges	None
6. Ex Parte No. 394 (Sub No. 1)	Cost Rates for Recyclables—1983 Determination	8/28/86
8. FD No. 28640 (Sub No. 9) et al.	Grand Truck Corporation—Control—Chicago, Milwaukee, St. Paul & Pacific Railroad Company and Amended Plan of Reorganization	None
9. NR 38772	Unit Train Rate on Coal—Thunder Junction, Wyoming to Montana	None
10. S5R2, S5R3, S5R6	Western, Eastern and Southern Rate Bureau Agreements	None
11. FD No. 30300	CSX Corporation—Control—American Commercial Lines, Inc.	8/29/84
12. FD No. 30400	Santa Fe Southern Pacific Corp.—Control—Southern Pacific Trans. Company—Merger—The Atchison, Topeka and Santa Fe Railway Company and Southern Pacific Trans. Co.	10/17/86

RAIL SECTION

<i>Number</i>	<i>Title Description</i>	<i>Statutory Deadline</i>
13. F.O. No. 37186	Tongue River Railroad Co. — Rail Construction and Operation — In Custer, Powder River and Rosebud Counties, MT	Indef.
14. F.O. No. 37426	National Railroad Passenger Corporation — Application Under Section 402(a) of the Rail Passenger Service Act	10/25/84
15. F.O. No. 37500	North-Southern Corporation — Control — North American Van Lines, Inc.	5/1/85

OTHER BUREAUS AND OFFICES

<i>Number</i>	<i>Title Description</i>	<i>Statutory Deadline</i>
1. Ex Parte No. 290 Sub No. 21	Railroad Cost Recovery Procedures — Proposed A-11-10-101 Index	None
2. Ex Parte No. 290 Sub No. 4	Railroad Cost Recovery Procedures — Productivity A-11-10-101	None
3. Ex Parte No. 347 Sub No. 11	Cost Rate Guidelines — National	None
4. Ex Parte No. 390 Sub No. 1	Standards for Railroad Revenue Adjustment	None
5. Ex Parte No. 399	Cost Recovery Percentage	None
6. Ex Parte No. 419	Adoption of the Uniform Railroad Costing System	None
7. Ex Parte No. 437	Railroad Cost of Capital — 1980	None
8. Ex Parte No. 444	Uniform Costing of Tariffs	None
9. A-11-10-101 Sub No. 1	Special Docket Proceedings — Exemption from Letter of Intent Requirements Involving Amounts of \$2,000 or Less	None
10. A-11-10-101	Review of Tariff Regulations — A-11-10-101	None
11. Ex Parte No. M-15 Sub No. 1 and Ex Parte No. 194 Sub No. 21	General Investigation and Revocation Procedures Governing Failure to File or Maintain Prescribed Insurance or Other Security for Public Protection Motor Carriers, Buses and Freight Forwarders	None
12. Ex Parte No. M-19 Sub No. 16	Practices of Motor Carriers, Carriers of Household Goods, Review of Operational Regulations	None

TABLE 4 — Informal proceedings

	<i>Fiscal Year 1982</i>	<i>Fiscal Year 1983</i>	<i>Fiscal Year 1984</i>
Applications for motor temporary authority:			
Filed	6 032	4 623	3 620
Disposed of	6 452	4 711	3 776
Pending at end of year	402	314	158
Petitions in applications for motor carrier temporary authority (received at headquarters)			
Filed	709	311	240
Disposed of	729	402	244
Pending at end of year	135	44	40

TABLE 5 — Certificates issued for abandonment, construction, acquisition and operation of rail lines (these figures reflect abandonment applications filed by bankrupt carriers and Conrail for fiscal years 1983 and 1984 under North East Rail Service Act (NERSA))

	<i>Fiscal Year 1982</i>		<i>Fiscal Year 1983</i>		<i>Fiscal Year 1984</i>	
	<i>Appli- cations</i>	<i>Miles</i>	<i>Appli- cations</i>	<i>Miles</i>	<i>Appli- cations</i>	<i>Miles</i>
1. Abandonment applications filed:	382*	48.71	178**	27.02	472***	38.78
Certificate of abandonment:						
Granted	381	51.51	172	24.54	419	30.83
Denied	3	52	2	28	7	548
Dismissed	39	696	4	91	5	69
2. Construction applications filed:	2	64.5	1	69	0	0
Granted	1	46.64	0	0	0	0
Denied	0	0	0	0	0	0
Dismissed	1	0	1	64.5	0	0
3. Acquisition and operation apps:						
Submitted	3	108.32†	0	0	0	0
Granted	1	41.7	0	0	0	0
Denied	1	61.1	1	43.9	0	0
Dismissed	0	0	1	23.2	0	0

* 104 applications filed under NERSA for certificates of abandonment; 144 of the applications were withdrawn; 34 were denied; 22 were granted.

** 100 applications were submitted; 10 were denied.

*** 96 applications were filed.

† 100 miles were submitted.

TABLE 6 — Tariff schedules, fiscal year 1984

	<i>Received</i>	<i>Criticized</i>	<i>Rejected</i>
Freight			
Common Carrier Tariffs			
Rail	49,270	147	87
Motor	998,602	5,284	8,123
Water	18,916	19	31
Freight Forwarder	30,756	12	48
International Ocean-Land Intermodal	146,431	0	0
Total	1,243,975	5,462	8,289
Contract Carrier Filings			
Rail Contracts	13,661	333	20
Passenger tariffs			
Rail	328	0	0
Motor	4,409	102	71
Water	47	0	0
Total Passenger	4,779	102	71
Grand Total	1,262,415	5,897	8,380

SPECIAL PERMISSION APPLICATIONS

<i>Received</i>	<i>Granted</i>	<i>Denied</i>	<i>Grant Denied in Part</i>	<i>Withdrawn</i>
9,070	4,018	96	4,758	198

TABLE 7 — Released rates board

	<i>Number</i>	<i>Petitions for Admin. Review</i>
Fiscal Year 1984		
On hand beginning 1 year	1	0
Received during the year	4	1
Total	5	1
Granted	3	0
Denied	1	0
Closed	0	0
Withdrawn	0	0
Total	4	0
Pending at end of year	1	1

TABLE 8. — Action taken on proposals (protested and non-protested) considered for suspension and/or investigation

<i>Suspensions — Fiscal Year 1984</i>						
	<i>Rail</i>	<i>Motor</i>	<i>Water</i>	<i>Fght. Fwdr.</i>	<i>Total No.</i>	<i>Per- cent</i>
Suspended in full	0	2	0	0	2	2.2
Suspended in part	1	0	0	0	1	1.0
Not suspended or investigated*	19	41	4	0	64	68.8
Not suspended but investigated*	1	0	1	0	2	2.2
Otherwise disposed of**	16	7	1	0	24	25.8
Total	37	50	6	0	93	100.0

* Permitted to become effective.

**Schedules canceled or rejected; protests withdrawn or filed too late.

TABLE 9. — Informal rate cases branch (Bureau of Traffic — Fiscal Year 1984)

Rate Cases General:	
On hand beginning of year	107
Received during year	6307
Disposed of during year	6347
Pending at end of year	67
Informal Complaints:	
On hand beginning of year	52
Received during year	47
Disposed of during year	75
Pending at end of year	24
Decisions — Statement of Claimed Damages (49 CFR 1133.2):	
On hand beginning of year	2
Received during year	9
Disposed of during year	10
Pending at end of year	1
Special Dockets Board:	
On hand beginning of year	190
Received during year	700
Disposed of during year	816
Pending at end of year	74

TABLE 10 — ICC unit of the National Defense Executive Reserve (NDER)

<i>NDER Group</i>	<i>Fiscal Year 1982 On Roll</i>	<i>Fiscal Year 1983 On Roll</i>	<i>Fiscal Year 1984 On Roll</i>
Ra	483	483	483
Motor	104	104	104
Water	33	33	33

TABLE 11 — Car Supply — Cars Installed, Retired, and Ordered, Class I Railroads

	<i>Fiscal Year</i>			
	<i>1969</i>	<i>1974</i>	<i>1979</i>	<i>1984</i>
Cars Installed:				
Box	19,722	13,738	8,591	0
Refrigerator	4,386	6,298	247	128
Gondola	3,543	1,360	1,860	0
Hopper	12,128	4,076	12,373	175
Covered Hopper	4,963	10,275	5,611	591
Flat	3,770	2,532	2,524	249
Other	743	643	102	85
Total Cars	49,255	34,711	31,308	1,228
Cars Retired:				
Box	32,365	23,854	16,444	23,697
Refrigerator	6,141	716*	4,006	2,948
Gondola	9,463	6,096	4,874	6,080
Hopper	25,246	19,009	12,920	13,854
Covered Hopper	2,305	2,859	1,674	4,463
Flat	1,149	3,583*	561	249*
Other	2,730	1,295	1,244	1,783
Total Cars	79,399	48,954	41,723	52,576
Cars Ordered:				
Box	24,737	8,665	9,927	0
Refrigerator	4,712	1,548	220	128
Gondola	7,656	7,512	4,754	250
Hopper	14,526	17,129	12,103	175
Covered Hopper	6,193	5,520	6,754	591
Flat	3,287	2,376	2,408	227
Other	739	392	902	85
Total Cars	61,850	43,165	37,068	1,456

*Negative retirement indicates increase in ownership in transfer of equipment, excess of new installations resulting from classification or transfer of equipment, purchase or lease of used equipment.

TABLE 12 — Ownership, Serviceable Ownership, and Turnaround Time, Class I Railroads

	<i>Fiscal Year</i>			
	1969	1974	1979	1984
Ownership:				
Plain Box	391 897	323 078	213 471	114 635
Equipped Box	154 064	175 603	168 461	137 467
Total Box	545 961	498 681	381 932	252 102
Refrigerators	99 629	94 074	65 708	51 621
Gondolas	194 534	179 089	155 136	124 320
Hoppers	402 382	351 414	326 945	272 442
Covered Hoppers	124 868	152 145	164 065	160 783
Flat	70 201	101 330	99 082	84 938
Others	55 161	38 839	28 306	20 617
Total Cars	1 492 736	1 415 572	1 221 174	966 823
Serviceable Cars:				
Plain Box	363 964	293 784	188 309	96 118
Equipped Box	146 310	162 526	150 092	113 804
Total Box	510 274	456 310	338 401	209 922
Refrigerators	96 298	89 656	60 840	46 418
Gondolas	181 830	169 406	143 102	114 384
Hoppers	385 958	331 869	310 504	253 953
Covered Hoppers	120 814	145 937	154 586	147 334
Flat	66 717	95 973	92 311	80 245
Others	52 437	37 305	26 816	19 102
Total Cars	1 414 328	1 326 456	1 126 560	871 358
	<i>Calendar Year</i>			
	1968	1973	1978	1983
Turnaround Time — Days:				
Box	21 60	22 56	28 85	41 7
Refrigerators	34 59	33 01	34 26	49 3
Gondolas	19 70	17 76	22 11	22 6
Hoppers	14 57	13 53	16 38	16 8
Covered Hoppers	21 21	21 16	24 12	30 8
Flat	12 07	12 20	14 16	13 7
Average All Cars	18 70	18 74	22 15	24 8

TABLE 13 — Extension of Time Limits — Rail Proceedings, Fiscal Year 1984

<i>Proceeding</i>	<i>Type of Proceeding</i>	<i>Notification of Extension</i>	<i>Reason and Duration</i>
No. 39002, <i>U.S. Felt, Inc. v. Burlington Northern Railroad Company, et al.</i>	Complaint	December 9, 1983	70-day extension to complete filing of evidence
No. 38188S, <i>Westinghouse Electric Corporation v. The Atchafalaya and Southern Railway Company, et al.</i>	Complaint	December 16, 1983	120-day extension to complete filing of evidence
FD No. 30202, <i>Seaboard System Railroad Inc. and Southern Railway Company v. Purchase and Trackage Rights Between Marietta and Montgomery, AL</i>	Purchase and trackage rights application	March 30, 1984	30-day extension to prepare decision for service
No. 37866S, <i>Atomac Electric Power Company v. The Baltimore and Ohio Railroad Company, et al.</i>	Complaint	June 8, 1984	90-day extension to deal with complex legal and costing issues
FD No. 30387, <i>Canadian National Railway Company and Canadian Pacific Limited v. Acquisition — interests of Consolidated Rail Corporation, Canada Southern Railway Company, and Detroit River Tunnel Company</i>	Acquisition	July 11, 1984	Final extension to deal with complex legal issues

TABLE 14 — Surcharges on Joint Rates Filed Under 49 U.S.C. 10705a Fiscal Year 1984

<i>Railroad Group & Type of Surcharge</i>	<i>Surcharges</i>	<i>Negative Surcharges</i>	<i>Net Annual Revenue (000)</i>
Comta			
Commodity	2	1	\$0.29.3
Light density line			
Total	2	1	(2.39.3)
Class I Carriers			
Other Than Comta			
Commodity	3	1	115.3
Light density line	1	1	
Total	4	2	115.3
Class II Carriers			
Commodity			
Light density line			
Total			
Class III Carriers			
Commodity	10	2	(5.2)
Light density line	5	1	16.2
Total	15	3	11.0
Total, All Carriers	21	6	\$113.0

APPENDIX C

PUBLICATIONS

The Commission issues many publications of general interest as well as those directed to the consumer. Additionally, the Commission issues technical and statistical publications dealing with transportation regulation.

Publications followed by an asterisk may be purchased from the Government Printing Office. For convenience, the GPO stock number has been included. Price information may be obtained by writing to:

Superintendent of Documents
Government Printing Office
Washington, D.C. 20402
Telephone: (202) 783-3238

Publications without an asterisk may be obtained free of charge by writing to the ICC office listed after the title.

- Bureau of Accounts (AC)
Interstate Commerce Commission
Washington, D.C. 20423
- Office of Compliance and Consumer Assistance (OCCA)
Interstate Commerce Commission
Washington, D.C. 20423
- Office of Public Affairs (PA)
Interstate Commerce Commission
Washington, D.C. 20423
- Office of the Secretary (SE)
Publications Room (Rm. B-221)
Interstate Commerce Commission
Washington, D.C. 20423
- Office of Transportation Analysis (OTA)
Interstate Commerce Commission
Washington, D.C. 20423
- Small Business Assistance Office (SBAO)
Interstate Commerce Commission
Washington, D.C. 20423

- Office of the Special Counsel (OSC)
Interstate Commerce Commission
Washington, D.C. 20423

ANNUAL REPORTS OF COMPANIES

These reports may be examined in the Bureau of Accounts' Public Reference Room, Room 3378, from 8:30 a.m. to 5:00 p.m. weekdays. Photocopies of these reports, at a cost of 25 cents per page, with a \$3.00 minimum charge per order, can be obtained by writing to the Office of the Secretary, Room 2215, ICC, Washington, D.C. 20423.

COMMISSION DECISIONS

Individual copies of the Commission's decisions may be obtained up to 90 days from the date of service from TS Infosystems, Inc., Room 2227, ICC, Washington, D.C. 20423, or by calling (toll-free) 800-424-5403 or (202) 289-4357. Printed reports are also available from the Publications Room until the supply is exhausted.

The Secretary's Office makes available a daily recorded listing of significant Commission decisions. This information may be obtained by calling (toll-free) 800-424-5230 or (202) 275-0895.

CONSUMER PUBLICATIONS

OCP-100 Household Goods Information
— OCCA

This booklet explains consumer rights when moving household goods across state lines.

GENERAL PUBLICATIONS

Annual Reports of the Commission to Congress

91st 1977 (026-000-01096-9)*

92nd 1978 (026-000-01135-3)*

93rd 1979 (026-000-01176-1)*

94th 1980 (026-000-01195-7)*

95th 1981 (026-000-01225-2)*

96th 1982

97th 1983 (026-000-01238-4)*

Code of Federal Regulations, Title 49 Revised to October 1984

Parts 1000-1199 General provisions, enforcement, motor carriers, freight forwarders, intermodal transportation, rules of practice, railroad consolidation, finance and reorganization special procedures (022-003-94228-9)*

Parts 1200-1299 Uniform system of accounts, destruction of reports, valuation (022-033-94229-7)*

Parts 1300-End Passenger freight tariffs and schedules, credit regulations (022-033-94230-1)*

Interstate Commerce Act

Available from the Government Printing Office in U.S. Code, 49 U.S.C. Sec. 10101 et seq.*

ICC Register

A daily summary of motor carrier applications and of decisions and notices issued by the ICC. Subscription information is available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Telephone (202) 783-3238.

INFORMATIONAL PUBLICATIONS

Can They Do That? Administrative Ruling No. 119 — OCCA

Department of Transportation and State Regulations — Bulletin No. 9 — SBAO

Filing Your Tariff or Schedule — Bulletin No. 8 — SBAO

Government Traffic — Bulletin No. 3 — SBAO

Guide to Applying for Permanent Operating Authority, Passengers — SBAO (December 1982)

Guide to Applying for Permanent Operating Authority, Property — SBAO (May 1984)

Guide to Applying for Temporary or Emergency Temporary Operating Authority — SBAO (January 1984)

Guide to Filing Protests, Replies and Appeals — Bulletin No. 6 — SBAO

Highlights of the Bus Regulatory Reform Act of 1982 — Bulletin No. 2 — SBAO

Highlights of the Motor Carrier Act of 1980 — Bulletin No. 1 — SBAO

Public Participation in Interstate Commerce Commission Cases Under the Bus Regulatory Reform Act of 1982 — OSC

Variable Cost and Revenue Issues in Intrastate Rate and Exit Cases Under the Bus Regulatory Reform Act of 1982 — OSC

Illegal Lumping — OCCA

Addresses illegal "lumper" practices

Lease-Purchase Plan — SBAO

Loss and Damage Claims: Can You Collect? — OCCA

Owner Operator Food Transportation — Bulletin No. 4 — SBAO

Sample Caption Summaries — Bulletin No. 7 — SBAO

Self-Help Against Unauthorized Operations — OCCA

Speeches and Statements — PA

ICC Commissioners' speeches or statements before congressional committees may be obtained on an individual basis from the Office of Public Affairs, Room 1211, ICC, Washington, D.C. 20423. Telephone (202) 275-7252

State Regulatory Commissions and Fuel Tax Divisions — Bulletin No. 10 — SBAO

SPECIALIZED PUBLICATIONS

Motor

An Analysis of Rates and Costs in the Motor Carrier Industry — OTA (April 1980)

Case Studies of Small Community General Freight Service — OTA (Semi-monthly)

Cost of Transporting Freight, by Class I and Class II Motor Common Carriers of General Commodities 1979 — AC

Consequences of Motor Carrier Deregulation on Fuel Efficiency — OTA

Thomas Corsi, Asst. Prof., University of Maryland, Merrill Roberts, Prof., University of Maryland (September 28, 1979)

The Effects of Recession on the Motor Carrier Industry — OTA (June 1981)

The Effect of Regulatory Reform on the Trucking Industry: Structure, Conduct and Performance—Preliminary Report — OTA (June 1981)

Empty Loaded Truck Miles on Interstate Highways During 1976 — OTA (April 1977)

An Evaluation of Charges that Regulatory Reform Will Degrade Small Community Motor Carrier Service — OTA (March 1980)

Financial and Economic Rate Analysis of the Motor Carrier Industry Volume II — R. L. Banks & Associates, Inc., October 2, 1979 — OTA

Highlights of Recent Activity in the Motor Carrier Industry — OTA (December 4, 1980)

The Intercity Bus Industry — OTA (January 1984)

Highway Form B — AC

Information for single-line and inter-line shipments. Statement No. 2E1-82

Some Implications for Motor Carrier Regulatory Reform — OTA (April 1980)

The Independent Trucker: A Nationwide Survey of Owner-Operators — OTA (1978)

Independent Trucker Follow-Up Survey of Owner-Operators — OTA (November 1979)

Initial Carrier and Shipper Responses to Intrastate Trucking Deregulation in Florida — OTA (June 1980)

Initial Paper: Regulatory Reform for the General Commodity Segment of the Motor Carrier Industry — OTA (January 1980)

Initial Report of the Motor Carrier Task Force, May 1979 — OTA

Report and recommendations of a staff task force on improving motor carrier regulation

The ICC and Owner-Operators: The Fuel Surcharge Program — OTA (April 1982)

The ICC and Owner-Operators: Leasing Rules and Modifications — OTA (April 1982)

Minority Motor Carriers: Status and Prospects — OTA (March 1982)

Motor Carrier Computerized Costing Program — SE

Computerization of the manual method used for determining motor carrier cost for individual freight movements. Statement No. 2E4-79

Customer Pickup of Food and Grocery Products Under Section 8 of the Motor Carrier Act of 1980 — OTA (June 29, 1984)

Motor Carrier Monitoring Program: Initial Notes from Carrier Contact and Sources — OTA (June 1981, November 1981, June 1982, July 1983)

Motor Carrier Platform Study — SE

Determination of the minutes per hundredweight in handling freight across a motor carrier platform. Statement No. 2S1-79 (July 1979)

The New Region One Motor Carrier — A Descriptive Profile

Prepared by Region 1 Motor Carrier staff. Boston, MA (June 1981)

Owner-Operators and the Motor Carrier Act of 1980 — OTA (February 1982)

Owner-Operators: Single Versus Multiple Unit Fleet Owners — OTA (June 1982)

Owner-Operator Turnover between 1977-1980 — OTA (June 1982)

Potential Benefits of Increased Price Competition in the Motor Carrier Industry — OTA (September 1980)

Selected Statistics of Class II Motor Carriers of Property — SE (Calendar 1982)

Selected Statistics of Class III Motor Carriers of Property — SE (Calendar 1978) Final

Small Community Service Study, As Mandated by Section 28 of the Motor Carrier Act — OTA (September 1, 1982)

Minority and Female Motor Carrier Listings — OTA (September 1983)

Transport Statistics in the U.S. Motor Carriers

(First Release, Part 2, 1982)*

(Second Release, Part 2, 1982)

Uniform State Regulations — Motor Carrier Act of 1980, Section 19, Report to Congress — OTA (December 1982)

Rail

Class I Line-Haul Railroads. Selected Earnings Data — SE (Quarterly)

Conrail Abandonment Brochure — OTA

Contract Advisory Service Summaries of Contracts Filed with the Commission — OTA (Quarterly)

Exempt Rail Transportation of Fresh Fruits and Vegetables. Initial Impact — OTA

Guidelines for Evaluating the Feasibility of Short Line Operations — OTA (August 1982)

The Prospect of Reorganizing the Milwaukee Road as a Viable Carrier — OTA

Railroad Abandonment Brochure — OTA

Railroad Transportation Contracts (ICC rules and procedures) Ex Parte No. 387 — OTA (October 1982)

Regressions for Railroad Cost Analysis — OTA (August 1977, ECMS-6)

Report of Railroad Employment Class I Line-Haul Railroads — SE

Statement No. M-350 (Monthly)

A Study to Perform an In-Depth Analysis

of Market Dominance and Its Relationship to Other Provisions of the 4-R Act — OTA

Transport Statistics in the U.S. Railroads (First Release, 1983, Second Release, 1980 Final)

Wage Statistics of Class I Railroads in the U.S. — SE Statement No. A-300 (Calendar 1983)

General

The Commission's Bureau of Accounts publishes quarterly reports on selected earnings data. SE

- *Large Class I Motor Carriers of Property.*
- *Large Class I Motor Carriers of Passengers, and*
- *Large Class I Household Carriers*

Early Experience with Airline Deregulation — OTA (April 1980)

Financial Management Information Package — SE

Informs small transportation businesses, especially new trucking firms, on ways to deal more effectively with the business aspects of their operations (1981).

Report of the Bus Industry Study Group. Interstate Commerce Commission, October 1979 — OTA

Transport Statistics in the U.S. Freight Forwarders (Calendar 1979) Final

Transport Statistics in the U.S. Private Car Lines (Calendar 1979) Final

Transport Statistics in the U.S. Water Carriers (Calendar 1979) Final

APPENDIX D

Appropriations and Employment

The following statement shows average full time employment and total appropriations for the fiscal years 1951 to 1984 for activities included under the current appropriation title "Salaries and Expenses."

<i>Year</i>	<i>Appropriation</i>	<i>Average Employment</i>	<i>Year</i>	<i>Appropriation</i>	<i>Average Employment</i>
1951	\$11 408 200	2 072	1969	24 664 000	1 808
1952	11 264 035	1 890	1970	27 742 660	1 802
1953	11 003 500	1 849	1971	28 442 000	1 731
1954	11 284 000	1 838	1972	30 640 000	1 676
1955	11 679 655	1 859	1973	33 720 000	1 765
1956	12 896 000	1 902	1974	40 681 000	1 874
1957	14 879 696	2 090	1975	44 970 000	1 986
1958	17 412 375	2 238	1976	52 455 000	2 034
1959	18 747 800	2 268	TQ	12 290 000	2 113
1960	19 650 000	2 344	1977	60 786 000	2 084
1961	21 451 500	2 386	1978	65 575 000	2 040
1962	22 075 000	2 400	1979	70 400 000	2 040
1963	23 502 800	2 413	1980	79 063 000	1 946
1964	24 670 000	2 408	1981	82 400 000	1 852
1965	26 715 000	2 339	1982	70 150 000	1 540
1966	27 540 000	2 376	1983	65 600 000	1 319
1967	27 169 000	1 929	1984	60 000 000	1 158
1968	23 846 000	1 899			

Fiscal Year 1984 Appropriations

An Act (Public Law 98-78, approved August 13, 1983) making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 1984, and for other purposes including the following:

Salaries and Expenses. For necessary expenses of the Interstate Commerce Commission, including services as authorized by 5 U.S.C. 3109, and not to exceed \$1,500 for official reception and representation expenses, \$60,000,000, provided, that Joint Board members and cooperating state commissioners may use government transportation requests when traveling in connection with their official duties as such.

Subsequently, Public Law 98-396, The Second Supplemental Appropriations Act 1984, approved August 22, 1984, ordered that \$1,200,000 be transferred to the Federal Aviation Administration.

Directed Rail Service. None of the funds provided under this Act shall be available for the execution of programs the obligations for which can reasonably be expected to be in excess of \$5,000,000 for directed rail service under 49 U.S.C. 11125 or any other legislation.

Status of Appropriations

Status of Fiscal Year 1984 appropriations as of September 30, 1984

Salaries and Expenses	
Total Appropriations	\$60,000,000
Transfer to FAA	(1,200,000)
Total Obligations	56,755,458
Unobligated balance lapsing	2,237,982
Directed Rail Service	
Unobligated balance available from prior appropriation	2,319,923
Total Obligations	
Payments to carriers	(3,000)
Recoveries of prior years obligations	35,997
Unobligated balance available (end of year)	2,352,920

Receipts

Status of receipt accounts as of September 30, 1984

Registration and filing fees	\$5,379,470
Fines, penalties & forfeitures	369,219
Service charges for allotments of pay for savings account	1,394
Charges for administrative services	51,060
Recoveries from railroad loan guarantees	114,772
Miscellaneous recoveries and refunds	13,886
Withholding for military benefits	3,648
Total Receipts	<u>\$5,933,449</u>

APPENDIX E

Carrier Financial and Statistical Data

TABLE 1 — Carriers regulated by the Commission

	Number
Carriers subject to uniform System of Accounts and required to file annual and periodic reports as of December 31, 1984	
Railroads (class I)	32
Motor carriers (class I passenger)	64
Motor carriers (class I property) ¹	1,088
Motor carriers (class II property) ²	1,554
Total	2,738
Carriers filing annual reports but not subject to prescribed uniform System of Accounts as of December 31, 1984	
Holding companies (a) (i)	4
Carriers and organizations not subject to filing annual reports as of December 31, 1984	
Railroads (class II)	23
Railroads (class III)	342
Railroads (switching and terminal companies)	137
Railroad express companies	84
Stockyard companies	16
Carriers (companies which furnish cars for use on lines of railroads)	158
Holding companies (motor)	69
Motor carriers of passengers (other than class I)	3,111
Class I and II motor carriers of property relieved from reporting requirements of class I (a) (i)	469
Class II motor carriers of property	27,370
Water carriers	275
Maritime carriers	6
Freight forwarders	261
Rate bureaus and organizations	71
Oil and gas pipeline companies	1
Protective services companies	6
Total	32,399
Grand Total	35,141

(a) (i) Carriers that have filed the annual operating revenue report for 1984, total operating revenue for 1984, and operating revenue for 1985.

Motor carriers (class I) and motor carriers (class II) are exempt from filing.

Motor carriers (class I) and motor carriers (class II) are exempt from filing if they have filed the annual operating revenue report for 1984, total operating revenue for 1984, and operating revenue for 1985.

Motor carriers (class I) and motor carriers (class II) are exempt from filing if they have filed the annual operating revenue report for 1984, total operating revenue for 1984, and operating revenue for 1985.

Motor carriers (class I) and motor carriers (class II) are exempt from filing if they have filed the annual operating revenue report for 1984, total operating revenue for 1984, and operating revenue for 1985.

Motor carriers (class I) and motor carriers (class II) are exempt from filing if they have filed the annual operating revenue report for 1984, total operating revenue for 1984, and operating revenue for 1985.

Motor carriers (class I) and motor carriers (class II) are exempt from filing if they have filed the annual operating revenue report for 1984, total operating revenue for 1984, and operating revenue for 1985.

TABLE 2 — Recapitulation of preliminary 1983 operating revenues, net investment and taxes (dollars in thousands)

<i>Kind of carrier</i>	<i>Number of Carriers Represented¹</i>	<i>Operating Revenues</i>	<i>Net Investment</i>	<i>Income taxes on Ordinary Income²</i>
Railroads — class I line haul	33	\$26,559,186	\$43,049,062	\$824,784
Motor carriers of property — class I intercity	923	33,899,450	7,628,646	701,872
Motor carriers of passengers — class I intercity	45	1,276,469	605,221	9,560
Total	1,001	61,735,108	51,342,929	1,537,096
Percentage distribution				
Railroads — class I line haul	33.3	43.0	83.8	54.0
Motor carriers of property — class I intercity	92.2	54.9	14.9	46.0
Motor carriers of passengers — class I intercity	4.5	2.1	1.3	0
Total	100.0	100.0	100.0	100.0

¹ Carriers for which preliminary financial and statistical data were available.
² Federal income taxes and provisions for deferred taxes only for railroads; all other carriers included Federal and State income taxes and provisions for taxes.

TABLE 3 — Class I line-haul railroads shareholders' equity, long-term debt and dividends (dollars in thousands)

Item	1981	1982	1983
1. Shareholders' equity			
a. Capital stock	\$4,394,346	\$4,406,990	\$4,229,805
b. Capital surplus	6,196,961	6,247,081	6,503,950
c. Retained income	13,959,194	14,919,829	16,085,155
d. Total equity	24,550,504	25,573,900	26,818,910
2. Long-term debt	12,812,913	12,000,193	11,494,414
3. Total equity and debt	37,363,417	37,574,093	38,313,324
4. Ratio of debt to equity (percent)	52.29	47.14	43.00
5. Amount of dividends			
a. Cash	710,318	1,109,469	1,114,486

1. Includes stock repurchases and cash payment of intercorporate payments.

NOTE: The data shown above are based upon ratable depreciation accounting for track structures (DA) which the Commission prescribed beginning with financial data filed by railroads for the year 1983 (Docket No. 36988, *Alternative Methods of Accounting for Railroad Track Structures* 367 ICC 157). The railroads in their 1983 Annual Reports Form R-1 were also required to restate on a DA basis certain data for each of the years 1979 through 1982. Consequently, restated data, to reflect DA for 1982 and 1981, are reflected above in retained income.

For purposes of comparability and consistency the data shown above exclude Boston and Maine Corporation and Delaware and Hudson Railway Company which received waivers from the Commission for adoption of DA for all or a portion of 1983. The Detroit, Toledo and Ironton Railroad Company, which merged into the Grand Trunk Western Railroad Company on December 31, 1983, is also excluded because restated data for 1982 and 1981 were not available.

TABLE 4. — Class I line-haul railroads, condensed income statement, financial ratios and employee data (dollars in thousands)

Item	1981	1982	1983
1 Number of carriers represented	33	31	29
CONDENSED INCOME STATEMENT			
2 Operating revenues			
a Freight	\$28 345.162	\$25 098.648	\$25.386.335
b Passenger	355.803	372.664	106.539
c Total operating revenues	29 920.110	26 555.229	26.263.605
3 Total operating expenses	26 440.540	24 636.643	23 673.216
4 Railway tax accruals	2 206.237	2 152.263	2 103.205
5 Net railway operating income	2 121.324	1 381.189	1 827.737
6 Ordinary income	2 789.511	1 838.712	1 843.039
7 Extraordinary items — Net ¹	98.540	—	19.567
8 Net income	2 888.051	1 838.712	1 862.606
NET INVESTMENT AND EQUITY			
9 Net investment in transportation property and equipment plus working capital	N A	N A	42 889.644
10 Shareholders' equity	24 550.504	25 573.900	26 818.910
FINANCIAL RATIOS (PERCENT)			
11 Operating ratio (L 3 ÷ L 2c)	88.37	92.78	90.14
12 Return on net investment (L 5 ÷ L 9)	N A	N A	4.26
13 Return on equity			
a Ordinary income basis (L 6 ÷ L 10)	11.36	7.19	6.87
b Net income basis (L 8 ÷ L 10)	11.76	7.19	6.95
EMPLOYEE DATA			
14 Average number	422.258	365.336	317.119
15 Compensation			
a Total	\$11 274.295	\$10 640.589	\$10 192.713
b Per hour paid for	11.107	12.251	13.296

¹ Includes income taxes on extraordinary items and discontinued operations and accounting changes.

NOTE: The data shown above are based upon ratable depreciation accounting for track structures (DA), which the Commission prescribed beginning with financial data filed by railroads for the year 1983 (Docket No. 36988, *Alternative Methods of Accounting for Railroad Track Structures*, 367 ICC 157). The railroads in their 1983 Annual Reports Form R-1 were also required to restate on a DA basis certain data for each of the years, 1979 through 1982. Consequently, restated data, to reflect DA for 1982 and 1981, are reflected above in operating expenses, net railway operating income, ordinary income, net income, shareholders' equity and return on equity.

For purposes of comparability and consistency the data shown above exclude Boston and Maine Corporation and Delaware and Hudson Railway Company, which received waivers from the Commission for adoption of DA for all or a portion of 1983. The Detroit, Toledo and Ironton Railroad Company, which merged into the Grand Trunk Western Railroad Company on December 31, 1983, is also excluded because restated data for 1982 and 1981 were not available.

No amounts are shown for the years 1982 and 1981 for net investment in transportation property (line 9) and return on net investment (line 10) because the railroads were not required to restate prior years' net investment data on a DA basis.

TABLE 5 — Class I line-haul railroads: current assets and current liabilities as of December 31, 1982 and 1983 (dollars in thousands)

<i>Item</i>	<i>1982 Amount</i>	<i>Percent of Change</i>	<i>1983 Amount</i>	<i>Percent of Change</i>
Total current assets	\$8 852 768	- 8.5	\$8 860 563	+ 1
Cash and temporary cash investments	2 835 596	+ 4.2	2 582 273	- 8.9
Materials and supplies	1 490 677	- 12.3	1 180 843	- 20.8
Total current liabilities	7 486 391	- 6.3	7 533 419	+ 6
Net working capital				
Including materials and supplies	1 366 377	- 18.8	1 327 144	- 2.9
Excluding materials and supplies	- 124 300	—	146 301	—
Ratios				
Current assets to current liabilities				
Including materials and supplies	1.18		1.18	
Excluding materials and supplies	.98		1.02	
Cash and temporary cash investments to current liabilities	38		34	

TABLE 6 — Class I intercity motor carriers of property condensed income statement, financial ratios, and employee data (dollars in thousands)

<i>Item</i>	1981	1982	1983¹
1 Number of carriers represented	741	957	923
CONDENSED INCOME STATEMENT			
2 Operating revenues			
a Freight-intercity-common carrier	\$28,855,955	\$27,996,947	\$29,267,511
b Freight-intercity-contract carrier	1,052,023	1,500,357	1,758,872
c Freight-local cartage	305,288	306,835	305,981
d Intercity transportation for other motor carriers	165,109	210,421	227,229
e Other operating revenue	2,144,544	2,231,879	2,339,860
f Total operating revenues	32,522,919	32,246,439	33,899,453
3 Operating expenses	31,234,555	31,336,901	32,090,546
4 Lease of distinct operating unit — net	2,186	1,285	1,632
5 Net carrier operating income	1,290,550	910,823	1,810,539
6 Other income and miscellaneous deductions from income — net	-185,612	-172,916	-141,688
7 Income taxes on ordinary income ²	476,912	366,467	701,872
8 Ordinary income	628,026	371,440	966,979
9 Extraordinary items — net ³	235,380	20,475	47,544
10 Net income	863,406	391,915	1,014,523
NET INVESTMENT AND EQUITY			
11 Net investment in carrier operating property and equipment plus working capital	6,810,360	7,200,555	7,628,646
12 Shareholders and proprietors equity	5,003,760	5,374,951	5,978,079
FINANCIAL RATIOS (PERCENT)			
13 Operating ratio (L 3 ÷ L 2f)	96.04	97.18	94.66
14 Return on net investment (L 5 ÷ L 11)	18.95	12.65	23.73
15 Return on equity (L 10 ÷ L 12)	17.26	7.29	16.97
EMPLOYEE DATA			
16 Average number	501,938	484,607	475,700
17 Compensation	\$12,558,620	\$12,333,825	\$12,401,002

¹ Preliminary² Does not include income taxes applicable to sole proprietorships, partnerships, and corporations that have elected to be taxed under sec. 1372(a) of the Internal Revenue Code; also does not include income taxes on extraordinary items. Includes provision for deferred taxes.³ Includes income taxes on extraordinary items and discontinued operations and accounting changes.

TABLE 7 — Class I intercity motor carriers of passengers: condensed income statement, financial ratios, and employee data (dollars in thousands)

Item	1981	1982	1983 ¹
1 Number of carriers represented	45	45	45
CONDENSED INCOME STATEMENT			
2 Operating revenues			
a Passenger intercity schedules	\$993,125	\$961,198	\$872,311
b Local and suburban schedules	6,498	5,249	3,652
c Charter or special service	192,144	199,686	180,362
d Other operating revenue	257,122	247,885	220,144
e Total operating revenues	1,448,889	1,414,018	1,276,469
3 Operating expenses	1,376,766	1,386,200	1,283,249
4 Lease of carrier property — net	9	188	187
5 Net carrier operating income	72,132	28,006	-6,593
6 Other income and miscellaneous deductions — net	16,322	6,680	23,031
7 Income taxes on ordinary income ²	24,178	-1,325	-9,560
8 Ordinary income	64,276	36,011	25,998
9 Extraordinary items — net ³	-2,375	-4,641	10,791
10 Net income	61,901	31,370	36,789
NET INVESTMENT AND EQUITY			
11 Net investment in carrier operating property and equipment plus working capital	540,969	655,374	665,221
12 Shareholders and proprietors' equity	630,461	610,677	627,225
FINANCIAL RATIOS (PERCENT)			
13 Operating ratio (L 3 ÷ L 2e)	95.00	98.03	100.53
14 Return on net investment (L 5 ÷ L 11)	13.33	4.27	—
15 Return on equity (L 10 ÷ L 12)	9.82	5.14	5.87
EMPLOYEE DATA			
16 Average number	30,891	28,783	25,020
17 Compensation	\$627,904	\$634,091	\$570,420

¹ Preliminary.² Does not include income taxes applicable to sole proprietorships, partnerships, and corporations that have elected to be taxed under sec. 1372(a) of the Internal Revenue Code; also does not include income taxes on extraordinary items; includes provision for deferred taxes.³ Includes income taxes on extraordinary items and discontinued operations and accounting changes.

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